1826.

SUPREME COURT OF THE UNITED STATES.

No. 113.

THOMAS KEARNEY ET AL., APPELLANTS,

vs.

JOHN I. TAYLOR ET AL.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF NEW JERSEY.

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Circuit court of the United States of America, for the district of New Jersey.

To the honorable the judges of the circuit court of the United States, for the district of New Jersey, in the third circuit:

Humbly complaining, show unto your honors, your orator, Thomas Kearny, and your oratrix, Catharine Kearny, of Clinton, in the State of Mississippi, and citizens of said State, your oratrix, Anne E. Kearny, of New Haven, in the State of Connecticut, and a citizen of said State, Anastasia K. Thomas, and your orator, George C. Thomas, husband of your oratrix, the said Anastasia, in her right, of Detroit, in the State of Michigan, and citizens of said State of Michigan, and your orator, Horatio N. Kearny, of Zanesville, in the State of Ohio, and a citizen of said State of Ohio.

That Edmund Kearny, late of the township of Middletown, in the county of Monmouth, and State of New Jersey, gentleman, died seized in fee simple, and in the actual possession of all that certain real estate upon which he resided, commonly known as Key Grove, but known at present by the name of Key Port and Lockport, in the township of Middletown, in the county of Monmouth, and State of New Jersey, that said Thomas, Anne, Catharine, Anastasia, and Horatio, and their brothers, James P. Kearny, and John Kearny, and their sister, Mary Kearny, were the only children and heirs at law of said Edmund at the time of his decease, who died intestate upon the thirtieth day of December, in the year eighteen hundred and twenty-two; and thereupon, and by force of the laws of descent of the State of New Jersey, your orators, the said Thomas Kearny and Horatio, and your oratrixes, the said Catharine, Anne, and Anastasia, together with the said James, and John, and Mary, became and were seized in fee simple, and in common and undivided of all the said real estate, consisting of nine hundred and sixty acres of land, more or less; that said estate is represented by the map drawn by Leonard Walling in June and October, 1829, now or lately in his possession, and of which a copy is annexed; that the said estate was divided into many fields and pastures, all included by an exterior boundary fence, and by the creeks or rivulets forming with the shore on Raritan or Prince's bay, the exterior boundary thereof, the whole being appurtenant to the mansion house occupied by their said late father, being the only dwelling house, except a farm house, then upon the premises, as shown by said map; that some part of said estate was fine arable land, but the greater part of said estate was covered with a large growth of valuable forest trees fit for building timber, and some fit for fuel; that a large income might have been realized out of said estate by a judicious and faithful management of said estate, and duly authorized sales of the said timber and fuel thereon.

But your orators and oratrixes have been, and are, defrauded by the cutting down, carrying away, and selling of a large quantity of timber and wood from the said estate, under pretence of a sale thereof upon an order of the orphan's court for said county, as hereinafter is stated and set forth.

And your orators and oratrixes further state, that the said James P. Kearny came of age on the thirty-first day of December, 1822, and shortly afterwards, viz., on the ninth day of December, 1823, the said James conveyed all his interest in said estate to Capt. William Foreman, in fee and in mortgage, to secure the payment of four hundred dollars lent and accommodated by said William Foreman to him, said James; that said James not having paid said debt in April, 1829, and being in necessitous circumstances, was induced to sell all his interest in said estate, subject to said mortgage, to Daniel Holmes, and upon or about the 15th day of April, 1829, the said James conveyed his right, title, and interest in said estate, by his deed in due form of law, to the said Daniel Holmes and John W. Holmes, a cousin of said Daniel, for the consideration of sixteen hundred dollars, subject to said mortgage, which deed has been duly recorded and acknowledged, as will appear by an authenticated copy thereof, duly certified according to law, and to which, or the original thereof when produced, reference is here made for greater certainty.

And your orators and oratrixes further show, that the said estate, as appears from the map thereof herein above referred to, and from the general map of the State of New Jersey, lays upon Raritan or Prince's bay, forming in fact a portion of the shore of said bay to the extent of a mile or more between two creeks, these being known by the names formerly given to them by the Indians; that the local advantages of this large real estate for the site of a seaport town were obvious to intelligent men, overlooking its position in competition with the site of Middletown point, and it was easy to foresee, that with no more capital than might be realized from judicious management and sales of the wood and timber on the estate, the whole estate might be converted into a considerable and flourishing seaport town in a few years, as your orators and oratrixes humbly show has in fact been demonstrated by the establishment on that estate of seventy dwellings, two stores, one good public house, two docks or wharves, and ten or twelve mechanics' shops, besides other buildings, all of which, except two dwellings and the farm buildings, have been erected since the said pretended sale, upon the order of the orphan's court above mentioned, in November, 1829, and most of them within six years next after said pretended sale, and are now occupied in more than one hundred separate lots by nearly a thousand persons.

And your orators and oratrixes further show, that said Daniel Holmes purchased from said James P. Kearny on or about the 15th day of April, 1829, as aforesaid, and applied by petition for himself and the said John W. Holmes to said orphan's court for a partition of said property, in the same month and within a few days after the date and

execution of said James's said deed to him, said Daniel, and his said cousin. But neither the said Daniel nor said John W. Holmes then or ever desired to have a partition of said estate, or to hold their share, to wit, one seventh of said estate, in severalty. But the said Daniel and John W. Holmes purchased in and became owners of one seventh part of said estate with the view and purpose of obtaining an order of the orphan's court for the sale of the whole of said estate, so that the same might be laid out and improved as a sea port town, as demonstrated in the result aforesaid. That upon the said application of the said Daniel Holmes, for himself and John W. Holmes, and with the aid and co-operation of others, as hereinafter stated, such proceedings were had in said orphan's court as that said estate was afterwards, viz., on the third and fourth days of November, eighteen hundred and twenty-nine, offered for sale under an order of sale of said court hereinafter set forth, and under pretence of a valid sale under said order the wood and timber were immediately thereafterwards cut from said estate and sold by the pretended purchasers to an extent and value far exceeding the amount of purchase money pretended to be bid therefor at the pretended public sale of said estate.

And your orators and oratrixes show, that at the time of the said purchase and application for partition by said Daniel and John W. Holmes, the said John Kearny had died intestate, and without issue; and your orators and oratrixes, the said Thomas Kearny, and the said Anne, Catharine, and Anastasia, were minors, and Joseph Taylor was their guardian, and said Mary E. Kearny was a minor, and John O. Stillwell was her guardian.

But your orators and oratrixes further show to your honors that the said Mary E. Kearny afterwards, viz., on or about the twenty-fifth day of December, in the year eighteen hundred and thirty-six, died intestate as to all her real estate in the State of New Jersey, and as to her claims, rights and interests, issues and proceeds thereof howsoever; and that, by force of the laws of New Jersey, all her aforesaid share, viz., one-seventh of all the said real estate of her said late father, and all her claims, rights and interests, and issues, and proceeds thereof, howsoever in any way incidental or appurtenant to, or arising out of, said real estate, descended and came to your orators and oratrixes in equal shares, that is to say, one-fifth of her said seventh to each of your orators and oratrixes in common and undivided; and further, that the said Mary E. Kearny had made the city of New York her place of residence for a long time before her decease; that she was not indebted to any person or persons in the State of New Jersey, and left at her decease no personal property therein. And your orators and oratrixes further show to your honors that the whole proceedings had before the orphan's court aforesaid, viz., the orphan's court for the county of Monmouth, in the State of New Jersey, upon the application of said Daniel Holmes, for himself and the said John W. Holmes, as the same appear of record without alteration or diminution, were as follows, viz :

To the judges of the orphan's court in and for the county of Monmouth, April term, 1829.

The petition of Daniel Holmes humbly showeth, that your petitioner and John W. Holmes has purchased of James P. Kearny, deceased, previous to his death, the equal undivided one-seventh part of all the land of Edmund Kearny, late of the county of Monmouth, deceased; that the said James P. Kearny and Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Ann Kearny, and Mary Eliza Kearny are the only children and heirs of the said Edmund Kearny, late of the county of Monmouth, deceased, who died without a will, and intestate, seized of a considerable real estate, in fee simple, in the township of Middletown, in the county of Monmouth, and State of New Jersey, by reason whereof the said real estate descended to the said James P. Kearny, (who conveyed to your petitioner and John W. Holmes, aforesaid,) and James P. Kearny, Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Ann Kearny, and Mary Eliza Kearny, who now hold the same undivided, as tenants in common, and, by reason of the minority of some of the children, no division can take place by agreements. Whereof your petitioner prays that the orphan's court for the county of Monmouth would be pleased to order and decree a division of all the real estate of the said Edmund Kearny, deceased, whereof he died seized, in the county of Monmouth, between the heirs of the said deceased and others interested, by metes and bounds, to be held in severalty, in manner prescribed by law, and that the court would appoint three indifferent persons for that purpose; and your petitioner, as in duty bound, will pray.

April term, 1829.

DANIEL HOLMES.

Endorsement.

Monmouth orphan's court, April term, 1829.

In division of real estate of Edmund Kearny, deceased. Petition for division.

The prayer of the within petitioner granted, and the court appoint James Hopping, Edward Taylor, and Leonard Walling, commissioners to divide, &c.

JEHU PATTERSON.

At an orphan's court holden at the court-house in Freehold, in and for the county of Monmouth, of the term of April, in the year of our Lord one thousand eight hundred and twenty-nine.

Present: Jehu Patterson, William Loyd, William J. Bowne, and others, esquires, judges.

In division of real estate of Edmund Kearny, deceased.

Application being made to this court by Daniel Holmes, esquire, in

writing, stating that he, the said Daniel Holmes, and John W. Holmes, had purchased of James P. Kearney, deceased, previous to his death, equal undivided one-seventh part of all the lands of Edmund Kearny, late of the county of Monmouth, deceased; that the said James P. Kearny, Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Ann Kearny, and Mary Eliza Kearny are the only children and heirs of the said Edmund Kearny, late of the county of Monmouth, deceased, who died without a will, and intestate, seized of a considerable real estate, in fee simple, in the township of Middletown, in the county of aforesaid, by reason whereof the said real estate hath descended to the said James P. Kearny, (who conveyed to your petitioner and John W. Holmes, as aforesaid,) and who now hold the same undivided, as tenants in common; and, by reason of the minority of some of the children, no division by agreement can take place between them; and, therefore, praying of this court to order and decree a division of all the real estate of the said Edmund Kearny, deceased, whereof he died seized, in the county of Monmouth, between the said children and others interested, agreeably to law; and whereas the several matters do [as] stated appear to the court to be true, therefore, on the said application, it is ordered and decreed by the court that James Hopping, Captain Edward Taylor, and Leonard Walling, esq., being three indifferent persons now appointed by the court, do make division of all the real estate held by the said Edmund Kearny, deceased, in fee simple, in the county of Monmouth, by metes and bounds, between the said children and others interested, agreeably to law. And it is further ordered that the report of the said James Hopping, esq., Captain Edward Taylor, and Leonard Walling, esq., or any two of them, made to the next orphan's court, after the division, in writing, and approved of by the court, shall be conclusive to all the parties concerned.

We, James Hopping, Edward Taylor, and Leonard Walling, commissioners within named, to make partition of the real estate of Edmund Kearny, deceased, among the several persons therein named, do severally promise and swear that we will make a fair and just partition of said estate, without partiality, favor, or affection, (if the same be made,) according to the best of our abilities and understanding.

JAMES HOPPING,
EDWARD TAYLOR,
LEONARD WALLING.

Sworn and subscribed before me, the 2d day of June, 1829.

JOSEPH TAYLOR,
Justice of the Peace.

We, the subscribers, commissioners appointed by a decree of the orphan's court of the county of Monmouth, in the term of April last past, to make division of the real estate of Edmund Kearny, deceased, in the county of Monmouth, between Daniel Holmes, esq., and John

W. Holmes, who purchased of James P. Kearny, deceased, previous to his death, the equal undivided one-seventh part of all the lands of Edmund Kearny, late of the county of Monmouth, deceased, and Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Ann Kearny, and Mary Eliza Kearny, heirs-at-law of said Edmund Kearny, deceased, some of whom are minors under the age of twenty-one years, do report to the judges of the orphan's court that, after having been duly sworn before Joseph Taylor, esq., one of the justices of the peace in and for said county of Monmouth, we have caused a survey and map or draught of the premises to be made, and, after viewing the same, are of the opinion that the said premises are so circumstanced that a division thereof cannot be made without great prejudice to the interest of the owners.

In witness whereof we have hereunto set our hands and seals, this tenth day of July, in the year our Lord eighteen hundred and twenty-nine.

JAMES HOPPING, [L. S.]
EDWARD TAYLOR, [L. S.]
LEONARD WALLING. [L. S.]

(*Endorsement.*)

Monmouth orphan's court, July term, 1829.

In division of the real estate of Edmund Kearny, deceased.

Report of commissioners.

The commissioners within, by their report in writing, having stated to the court, the land of the said deceased *are* so circumstanced that a partition thereof cannot be made without great prejudice to the owners, and the court being thereof satisfied, do order the commissioners to make sale, &c. JEHU PATTERSON.

At an orphan's court, holden at the court-house in Freehold, in and for the county of Monmouth, of the term of July, in the year of our Lord one thousand eight hundred and twenty-nine.

Present, Jehu Patterson, John Hull, William Lloyd, and others, esquires, judges.

In case of division of the real estate of Edmund Kearny, deceased.

On report of commissioners.

The commissioners appointed in the above case, in the term of April last, namely, James Hopping, Edward Taylor, and Leonard Walling, for the purpose of making division of the real estate of Edmund Kearny, deceased, situate in the township of Middletown, in the county of Monmouth, having made their report, in writing under their seals, to this court, at this time, stating that, after having been duly sworn be-

fore Joseph Taylor, esq., one of the justices of the peace in and for the county of Monmouth, they caused a survey and map or draught of the premises to be made, and, after viewing the same, are of opinion that the said premises are so circumstanced that a division thereof cannot be made without great prejudice to the interest of the said owners; and it appearing, by satisfactory proof to the court, that the said tract of land or real estate cannot be partitioned among the owners and proprietors thereof without great prejudice to their interest, it is therefore ordered and decreed by this court, that the said James Hopping, Edward Taylor, and Leonard Walling, the commissioners aforesaid, do sell the said tract of land or real estate at public auction, to the highest bidder, giving at least sixty days notice of the time and place of such sale, by advertisements put up in five of the most public places in the county, and also in one public newspaper circulating in the same county; and it is further ordered that the said commissioners shall make report of such sale to the next stated term of this court, after such sale, agreeably to law.

In pursuance of a decree of the orphan's court of the county of Monmouth, made in the term of July last past, appointing us, the subscribers, commissioners for selling the real estate of Edmund Kearny, deceased, in the township of Middletown, in the county of Monmouth, we do report to the judges of the said orphan's court, that after having given at least sixty days' notice, by advertisements set up in five of the most public places in said county, and in a public newspaper circulating in the same, (to wit, The Monmouth Enquirer,) of the time and place, did, on the third and fourth days of November last past, expose to sale, by wayof public vendue or outcry, all the lands of said deceased, in such parts or portions, to such persons, and for such sums, as are hereinafter set forth, (to wit:)

Lot No. one, containing $224\frac{8\,2}{1\,0\,0}$ acres, to Isaac K. Lippincott, at $30 per acre - - - - - $6,744 60

Lot No. two, containing $56\frac{4\,2}{1\,0\,0}$ acres, to Thomas Carhart, for $28 25 per acre - - - - 1,593 86½

Lot No. three, containing $32\frac{8\,5}{1\,0\,0}$ acres, to Amos Walling, for $26 75 per acre - - - - - 878 73¾

Lot No. four, containing $18\frac{4\,3}{1\,0\,0}$ acres, to Jonathan Tilton, at $38 50 per acre - - - - 709 55½

Lot No. five, containing $59\frac{6\,5}{1\,0\,0}$ acres, to Ezra Osborn, esq., for $22 50 per acre - - - - 1,339 20

Lot No. six, containing $56\frac{3\,4}{1\,0\,0}$ acres, to Ezra Osborn, esq., for $13 25 per acre - - - - 753 13

Lot No. seven, containing $48\frac{4\,6}{1\,0\,0}$ acres, to Isaac K. Lippincott, for $25 25 per acre - - - - 1,223 61¼

Lot No. eight, containing $24\frac{1\,1}{1\,0\,0}$ acres, to Richard S. Burrowes, for $43 per acre - - - - 1,036 73

Lot No. nine, containing $7\frac{3\,4}{1\,0\,0}$ acres, to Isaac K. Lippincott, for $18 50 per acre - - - - 135 79

($14,415 22½)

Lot No. ten, containing $16\frac{5\,1}{1\,0\,0}$ acres, to Ezra Osborn, esq., for $11 75 per acre - - - - 194 69¾

Lot No. eleven, containing $59\frac{15}{100}$ rcres, to James Sproul, at $33 50 per acre - - - - -	1,980 85½
Lot No. twelve, containing $26\frac{92}{100}$ acres, to Thomas J. Walling, for $33 per acre - - - -	858 56
Lot No. thirteen, containing $49\frac{43}{100}$ acres, to Amos Walling, for 29 50 per acre - - - -	1,457 89
Lot No. fourteen, containing $40\frac{95}{100}$ acres, to Joseph Carhart, for $7 per acre - - - -	282 45
Lot No. fifteen, containing $61\frac{84}{100}$ acres, to Horatio Kearny, for $12 25 per acre - - -	751 41
	$19,941 19

Amounting in all to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, the one-half of which, by the conditions of sale, was made payable on the first day of April next, when deeds were to be made, and possession of given to the purchasers; the other half was made payable in one year from the first of April next, without interest, by the purchasers giving approved security for the payment thereof.

In witness whereof we have hereunto set our hands and seals, this twentieth day of January, in the year of our Lord one thousand eight hundred and thirty.

JAMES HOPPING, [L. S.]
EDWARD TAYLOZ, [L. S.]
LEONARD WALLING. [L. S.]

At an orphan's court, holden at the court-house in Freehold, in and for the county of Monmouth, of the term of January, in the year of our Lord one thousand eight hundred and thirty.

Present, Jehu Patterson, John Hall, William Lloyd, and others, esquires, judges.

On application for division of real estate of Edmund Kearny, deceased, and report of commissioners, and order for sale.

The commissioners appointed in this case, namely, James Hopping, Edward Taylor, and Leonard Walling, to make sale of the real estate of the said Edmund Kearny, deceased, having made their report in writing to this court, at this term, stating that in pursuance of the decree of the orphan's court, made in the term of July last past, they do report, that after giving at least sixty days' notice by advertisement set up in five of the most public places in said county, and in a public newspaper circulating in the same, to wit, the Monmouth Inquirer, of the time and place, did, on the third and fourth days of November last past, expose to sale, by way of public vendue or outcry, all the lands of said deceased, in such parts or portions, to such persons, and for such sums, as herein set forth, amounting in the whole to nineteen thousand nine hundred and forty-one dollars and nineteen cents, the

one-half of which by the conditions of sale was made payable on the first of April next, when deed *are* to *be* made; &c., and possession given to the purchasers; the other half was made payable in one year from the first of April next, without interest; all which appearing to the court to be true, therefore the court do approve of the sales so made as aforesaid, and do confirm the same as valid and effectual in the law, and do hereby direct the commissioners aforesaid to execute good and sufficient conveyances in the law, to the purchasers accordingly; *and* the court do further order that the moneys arising from the sales aforesaid be paid by the said commissioners to the parties interested in the said lands as aforesaid, their guardian or legal representatives, in proportion to their respective rights in the same, deducting therefrom all legal costs and expenses.

STATE OF NEW JERSEY,
Monmouth county, ss:

I, Henry D. Polhemus, surrogate, and clerk of the orphan's court of the county of Monmouth, in the State of New Jersey, do certify the foregoing to be truly copied from the minutes of said court, and from the original papers of file in the surrogate's office of said county.

As witness my hand and seal of office at Freehold, this twelfth [L. S.] day of August, one thousand eight hundred and forty.

HENRY D. POLHEMUS.

I have examined the report of sales, and have no recollection of the death of any one of the purchasers named therein, and believe that they are all living at this time.

HENRY D. POLHEMUS.

August 12, 1840.

And your orators and oratrixes further show, that immediately after the said order of said orphan's court, directing the persons named as commissioners in said record of the proceedings of said court to execute deeds of conveyance of said estate, was passed by the judges of said court, the said persons so therein named as commissioners, viz., James Hopping, Edward Taylor, and Leonard Walling, then and there permitted Ezra Osborn, Isaac K. Lippincott and John I. Taylor, Daniel Holmes, David S. Bray, John Hopping, the said James Hopping, Leonard Walling, the two last being the commissioners of these names, together with said Joseph Taylor, guardian as aforesaid, and administrator of the aforesaid Edmund Kearny, assenting to said permission to enter upon the premises, to wit, upon the lots numbered 5, 6, 7, 8, 9, 10, on the map of said estate, made by said Leonard Walling as aforesaid, and then and there to cut down, carry away, and sell the timber and wood there being, and thereafterwards the said David S. Bray, John Hopping, James Hopping, Leonard Walling, John I. Taylor and Joseph Taylor, Isaac K. Lippincott, and Ezra Osborn, did enter under and by permission of said commissioners and said guardian upon said premises, being part of said real estate called Key Grove,

numbered 5, 6, 7, 8, 9, 10, on said map as aforesaid, and thereafterwards acted as owners thereof, viz., immediately upon and after the passing of said order of said orphan's court directing conveyances, and thereafterwards continually did then and there exercise acts of ownership upon said premises so numbered as aforesaid, under permission of said commissioners, and with the assent of Joseph Taylor, guardian as aforesaid, and then and there under color and pretence of the sale or sales of said several lots of land so numbered as aforesaid, to them, said David S. Bray, James and John Hopping, Leonard Walling, Joseph Taylor, John I. Taylor, Ezra Osborn, and Isaac K. Lippincott, or to some or one of them, for and in behalf of all of them, they, said David S. Bray, James and John Hopping, Leonard Walling, Joseph Taylor, John I. Taylor, Ezra Osborn, and Isaac K. Lippincott, or some or one of them for all the rest, and for themselves or himself, did then and there cut down and carry away a large quantity of wood and timber, of great value, and did sell the same for a large sum of money, viz., the sum of thirty thousand dollars and upwards, and did cause so much of said money as the pretended purchase-money for the pretended sale of said lots was computed at, viz., the sum of $\$4,683\frac{15}{100}$ to be paid to said Joseph Taylor, as guardian as aforesaid, who then and there received the same; but all the rest and residue of the proceeds of sale of said wood and timber, cut from said lots numbered as aforesaid, was retained by the said David S. Bray, James and John Hopping, Leonard Walling, Joseph Taylor, John I. Taylor, Ezra Osborn, and Isaac K. Lippincott, and Edward Taylor, some or all of them, for the use and benefit of some or all of them, and has been ever since retained as aforesaid.

And your orators further show, that on or about the first day of April, A. D. 1830, the said commissioners pretending to act under the orders of said orphan's court, directing deeds of conveyance to be made to the persons reported as purchasers of said lots, at said pretended sale thereof, made and executed a deed of conveyance in their said capacity of commissioners to the above named John I. Taylor, wherein they recited among other things that the said Ezra Osborn, Richard C. Burrowes, and Isaac K. Lippincott, had purchased at said auction in November, 1829, the aforesaid lots numbered 5, 6, 7, 8, 9, 10, as the agents of John I. Taylor, and for his sole use and benefit, and that upon the request and direction of said Bray, Burrowes, and Lippincott, the said commissioners then made and executed the said deed of conveyance of said lots to said John I. Taylor; all which appears by reference to said original deed in the hands of said John I. Taylor, or by reference to an authenticated copy thereof, in due form of law, to which, when produced, reference is here made for greater certainty as part of this bill. The said deed of conveyance reciting and witnessing in part, as follows, viz:

"And whereas the said commissioners, pursuant to the said order and decree of the said judges, having given due and timely notice by advertisements signed by themselves, and set up at five of the most public

places in the said county for at least sixty days, and also by publishing the same in a public newspaper circulating in the same, to wit, the Monmouth Enquirer, published in Freehold, for the like space of time next preceding the time appointed for selling the same, and in pursuance of the laws of New Jersey, in such case made and provided, did on the premises, in the said county, on the fourth day of November last, offer and expose to sale at public vendue or outcry, in open market, to the highest bidder, all that certain tract or lot of land situate, lying, and being in the county hereinafter more particularly described, being part of the real estate mentioned in the above recited order. And Ezra Osborn, Isaac K. Lippencott, and Richard C. Burrowes, for and in behalf of the said John I. Taylor, party of the second part, then and there did bid for the said premises the sum of four thousand six hundred and eighty-three dollars and sixteen and a quarter cents, and no person bidding more, the said tract or lot of land was, on the said fourth day of November last past, at the place aforesaid, in due and open manner, cried off and sold to the said Ezra Osborn, Isaac K. Lippencott, and Richard C. Burrowes, for and in behalf of the said John I. Taylor, the party of the second part, as the highest bidder for the same. And whereas the said James Hopping, Edward Taylor, and Leonard Walling, commissioners as aforesaid, in the term of January, in the present year of our Lord one thousand eight hundred and thirty, in pursuance of the above recited order and decree, did make report to the judges of the said orphan's court, that they had made sale of the said real estate of the said Edmund Kearny, deceased, in such parts or portions, to such persons, and for such sums, as therein set forth. Whereupon the said judges, in the same term of January, in the said year of our Lord one thousand eight hundred and thirty, did approve the sales so made as aforesaid, and did confirm the same as valid and effectual in the law, and directed the commissioners aforesaid to execute good and sufficient conveyances in the law to purchasers accordingly. Now, therefore, in order to convey and confirm the same unto the said John I. Taylor, his heirs and assigns, to whom the said Ezra Osborn, Isaac K. Lippencott, and Richard C. Burrowes, have directed the conveyance to be made: This indenture witnesseth, that the said James Hopping, Edward Taylor, and Leonard Walling, commissioners as aforesaid, for and in consideration of the sum of four thousand six hundred and eighty-three dollars and sixteen and a quarter cents, money of the United States, to them in hand paid or secured to be paid at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and themselves to be therewith fully satisfied, contented, and paid, and thereof and therefrom, and from every part and parcel thereof, do acquit, exonerate, and discharge the said John I. Taylor, his heirs, executors, and administrators, have granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do, by virtue of the power given them in and by the authority above recited, fully, freely, and absolutely grant, bargain, sell, alien, release, enfeoff, convey, and confirm, unto the said John I. Taylor, his heirs

and assigns forever, all those certain tracts or lots of land distinguished and numbered on a map laid down agreeably to a survey made by Leonard Walling, in the month of June, 1829, by lots numbered five, six, seven, eight, nine, and ten. To hold the above granted and bargained premises with the appurtenances, to the said John I. Taylor, his heirs and assigns, to the only proper use, benefit, and behoof of the said John I. Taylor, his heirs and assigns, forever. And the said James Hopping, Edward Taylor, and Leonard Walling, commissioners as aforesaid, for themselves, their heirs, executors, and administrators, do covenant and grant, to and with the said John I. Taylor, his heirs and assigns, that they, the said James Hopping, Edward Taylor, and Leonard Walling, or either of them, have not done, or caused to be done, any act, matter, or thing, whereby the estate hereby granted and conveyed is, or in any way may be, changed, charged, altered, encumbered, or defeated."

And your orators and oratrixes further show to your honors that the said John I. Taylor was not, in fact, the purchaser, for his own use and benefit, of the said lots numbered 5, 6, 7, 8, 9, 10, but that the persons for whose use and benefit the said deed of conveyance was executed by said commissioners to said John I. Taylor, and who were intended and meant to be the real owners of said lots, were the said James Hopping and Leonard Walling, two of the said commissioners, Joseph Taylor, the guardian of some of your orators and oratrixes as aforesaid, and administrator as aforesaid, Isaac K. Lippincott, John Hopping, the brother of said James Hopping, David S. Bray, and Ezra Osborn, as is hereinafter more particularly set forth and shown.

And your orators and oratrixes further show, that said deed of conveyance from said commissioners to said John I. Taylor was, at the time of its being signed, sealed, and delivered by them, and ever since has been, utterly void and of no legal effect, because the same was made fraudulently by the said commissioners for the use and benefit of two of them, viz., the said James Hopping and Leonard Walling, and of said Joseph Taylor, guardian as aforesaid, together with their associates, the said John Hopping, John I. Taylor, Ezra Osborn, David S. Bray, and Isaac K. Lippincott, unlawfully combining and confederating together with said commissioners and guardian, as herein set forth, and because, moreover, said deed of conveyance, so as aforesaid executed by the said commissioners to said John I. Taylor, then and there, was utterly void in law, according to the true intent and construction of the statutes and rules of law under which said proceedings were had and conducted, as the same has been adjudged by the justices of the Supreme Court of the State of New Jersey, in the case of Den vs. Lambert, reported in the first volume of Green's Reports, and has been also declaratively affirmed by legislative enactment, as hereinafter is set forth, and your orators and oratrixes show, that although the said pretended sale, witnessed by said deed of conveyance by said commissioners to said John I. Taylor, and the said deed of conveyance, purporting to convey said lots numbered 5, 6, 7, 8, 9, 10, was utterly void, and of

no legal effect, yet the said commissioners and said guardians of certain of your orators and oratrixes, as aforesaid, nevertheless permitted said John I. Taylor and his associates, viz., the said James Hopping, Joseph Taylor, Leonard Walling, David S. Bray, Isaac K. Lippincott, John Hopping, and Ezra Osborn, or some of them, for themselves and for the rest of them, under color of pretence of a valid sale, and of a good and sufficient deed in the law, to enter upon said lots numbered 5, 6, 7, 8, 9, 10, and cut down and carry away the wood and timber from said lots, and to sell the same to raise the purchase money for said lots, and other lots, parcel of said real estate, and thenceforwards they, said John I. Taylor, Isaac K. Lippincott, James Hopping, Edward Taylor, Leonard Walling, Joseph Taylor, David S. Bray, Ezra Osborn, or some of these, for others of them, and for all of them, did cut down, and carry away and sell, a large quantity of wood and timber from said lots last mentioned, and from other parts of said estate, to the amount in value of thirty thousand dollars and upwards, and received therefor the said sum of thirty thousand dollars and upwards, as your orators are informed and believe. And your orators and oratrixes further show, that your orators and oratrixes were all minors at the time of said sale of said real estate, and of the sale of said timber and wood, except the said Horatio N. Kearny, and he, on his part, shows to your honors that he, said Horatio, being at the time quite uninformed of, and wholly unaccustomed to, all matters of business, and having always placed entire confidence in the fidelity or the said Joseph Taylor as guardian as aforesaid, and formerly his guardian, was easily and ignorantly induced to acquiesce in the aforesaid proceedings in said orphan's court, so far as not to oppose them in the pretended sale of the whole of said estate, as well as of said last mentioned lots, and did believe at the time that all the proceedings were correct and legal, without covin, fraud, or intent on his part to defraud, his said brother and sisters, nor did he ever know, or come to the knowledge of any covin, fraud, or unfairness of any of said commissioners, guardians, or reputed purchasers, until a very short time before the filing of this bill of complaint, that is to say, until within six years previous to the day of the filing of this bill; and as to the rest of your orators and oratrixes, they respectively state that they were not of age, and that they had no knowledge of the proceedings under the said order of the said orphan's court, or that they were irregular, insufficient, unfair, and fraudulent, and void, until within one year next before the filing of this bill, and no knowledge whatsoever of any proofs of such irregularity, insufficiency, unfairness, fraud, illegality, and invalidity, until some time in the year eighteen hundred and forty.

And your orators and oratrixes further show, that upon discovery thereof your orators caused legal measures to be taken to establish your orators' legal right and title to the possession of said lots, numbered 5, 6, 7, 8, 9, 10; and certain actions of ejectment in their behalf were instituted, and one of them is now pending in the circuit court of the United States, for this district, for the purpose of recovering the possession of some of said lots so numbered, wherein these complainants are

plaintiffs, and Oliver Vanderbilt, a grantee of said Joseph I. Taylor, is defendant. But your orators humbly show, that no action at law can be maintained against the said Leonard Walling or his heirs, James Hopping or his heirs, Joseph Taylor or his heirs, Edward Taylor, John I. Taylor, John Hopping, Ezra Osborn, and David S. Bray, and Isaac K. Lippincott, to recover of them the proceeds of the said sales of said wood and timber so cut as aforesaid from said lots so numbered as aforesaid, or from other parts of said estate, because the same was cut and carried away, and sold under the orders of said orphans' court, and in the exercise of a discretionary power vested in said commissioners for the time being by the aforesaid orders of said orphan's court, yet remaining in full force at law because not set aside or reversed at law, the time allowed by law for appeal and for obtaining a writ of certiorari having expired before the discovery of the evidence of said fraudulent proceedings; and the said guardian having continued his concealment thereof during all his lifetime, and all the said confederates still concealing them, so that the proceeds of said timber and wood yet unpaid may be utterly lost to your orators and oratrixes.

And your orators and oratrixes further show, that upon and immediately after the commencement of said actions of ejectment at law, viz., at the last session of the legislature, the said Isaac K. Lippincott, Leonard Walling, John I. Taylor, and Edward Taylor, John Hopping, Ezra Osborn, David S. Bray, the said Joseph Taylor and James Hopping, being then deceased, applied to the legislature of New Jersey for a law to be passed for their relief, they, said applicants, representing to the legislature, among other things, that the said deed of conveyance, so as aforesaid executed by said commissioners to said John I. Taylor, was utterly void in law by reason of its being unauthorized by the order of said orphan's court, and not made or executed as the law, so adjudged and construed as aforesaid, did require. Whereupon the legislature of the State of New Jersey, upon the application of said Isaac K. Lippincott and his said associates, Leonard Walling and the others last above named, did enact and pass a certain law, that is to say, in the month of March last, to the effect and in substance as follows, viz.:

"An act supplementary to the 'acts' entitled 'An act for the more easy partition of lands held by copartners, joint tenants, and tenants in common,' and 'An act to ascertain the power and authority of the ordinary and his surrogates to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of this State.'"

"Whereas, it has sometimes happened, that after lands or real estate have been duly sold by commissioners, under and by virtue of the acts to which this act is supplementary, and a former act supplementary thereto, and after such sale has been reported to, and approved and confirmed by, the proper court, and a rule of the said court has been made, directing the said commissioners to execute good and sufficient conveyances in the law to the purchasers for the lands or real estate so

sold to them, that the said commissioners, with the consent of the persons reported as purchasers, have executed conveyances for the land or real estate so sold to some other person or persons, and have received the price agreed to be paid for such land or real estate: Therefore,

"Sec. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, that, upon proof being made to the satisfaction of the court or jury before whom any such deed or conveyance may be offered in evidence, that the lands or real estate therein mentioned were sold fairly and without fraud, and that such deed or conveyance was made and executed in good faith, and for a sufficient consideration, and with the consent of the person or persons reported to the court as the purchaser or purchasers, the said deed or conveyance shall have the same force and effect as though the same had been made and executed to the purchaser or purchasers reported to the court."

And your orators and oratrixes thereupon submit to your honors, that the legislature of New Jersey, by the said enactment, did affirmatively enact and declare, that the construction of the law given in the case of Den vs. Lambert, in the first volume of Green's Reports, was and is the established law of the State of New Jersey; and that all deeds so executed, as was the deed of conveyance by the commissioners aforesaid, to John I. Taylor aforesaid, were and are utterly void; and that said deed of conveyance by said commissioners to said John I. Taylor, was and is utterly void; and that the title of your orators and oratrixes was not thereby divested; moreover, that the said deed cannot be received in evidence in or by any court of law or equity until the persons who shall set it up or offer to give it in evidence for any purpose, shall first give proof to the satisfaction of the court, before whom it is offered in evidence, that all the proceedings in respect to the sale of the property which it purports to convey, were and are fair and free from all fraud.

And your orators and oratrixes further show, that it appeared to the legislature of the State of New Jersey, at the time said law was under consideration, and by the remonstrance and petition of your orators and oratrixes presented to said legislature, and otherwise, that the time of the appeal from the proceedings of said orphan's court had passed long before your orators and oratrixes came of age, and that no writ of certiorari could be brought to correct the numerous illegalities and errors of said proceedings after the death of one of said commissioners, viz., James Hopping, who died after the year 1837, and before the said irregularities, illegalities, and errors came to be known to your orators and oratrixes, if, indeed, such irregularities, illegalities, and errors could be corrected at any time, which your orators and oratrixes aver they could not, and your orators and oratrixes humbly show that they could not be corrected, as appears from the facts and circumstances hereinafter set forth and shown to your honors.

And your orators and oratrixes further show, that the legislature being fully informed of the premises, and perceiving reason to guard and protect your orators and oratrixes against all unfair and fraudulent acts

and doings whatsoever, done or suffered by said commissioners and the said guardian of your orators and oratrixes, did, in and by said law, enact and provide that all the proceedings of said orphan's court, and of the commissioners and guardian of your orators and oratrixes under and by virtue of said orders, should be subject to proofs in respect to the fairness or freedom from fraud, of every order, act, and proceedings of said commissioners and guardian, howsoever, in any way relating to the said pretended sale of said property, referred to and mentioned in your orators and oratrixes' said petition and remonstrance, of which a true copy is herewith exhibited in print, and is referred to for greater certainty, and also the petition of said Lippincott and his associates, and the reply thereto of your orators and oratrixes. And your orators and oratrixes humbly submit, that all the proceedings in said orphan's court, as above set forth, were and are null and void in law, and among other reasons your orators and oratrixes set forth the following, to wit, because the said lands or real estate, numbered 5, 6, 7, 8, 9, 10, on the map aforesaid, have not been fully sold by legal commissioners under and by virtue of the acts to which the acts of the legislature above recited or set forth is supplementary, and a former act supplementary thereto, nor has any legal sale been legally reported and approved and confirmed by the proper court, nor has a legal rule or order been made directing the said commissioners to execute good and sufficient conveyances in law to the purchasers for the lands or real estate as aforesaid pretended to be sold, nor have the commissioners executed, with the consent of any real and legal purchasers, or any persons legally reported as purchasers, any conveyance for said lands or real estate numbered 5, 6, 7, 8, 9, 10, as aforesaid, to said John I. Taylor, or to any other person. Nor were the said lands or real estate, so numbered as aforesaid, purchased by Ezra Osborn, Isaac K. Lippincott, and Richard C. Burrowes, as agents for and in behalf of said John I. Taylor, as the above named commissioners, in their said deed of conveyance to said John I. Taylor, recite and set forth as of their own knowledge.

But, on the contrary, they, said James Hopping and Leonard Walling, two of the said commissioners, and also Joseph Taylor, the guardian aforesaid, were in fact unfairly and fraudulently, and under concealment, the purchasers of said lands or real estate so as aforesaid numbered 5, 6, 7, 8, 9, 10, together with said John I. Taylor, John Hopping, Isaac K. Lippincott, and David S. Bray and Ezra Osborn; that the said James Hopping and Leonard Walling, commissioners as aforesaid, and Joseph Taylor, guardian as aforesaid, well knew that their purchase of any of said lands or real estate was fraudulent, and that if they reported themselves to the orphan's court as purchasers jointly with the said Joseph Taylor, John Hopping, Ezra Osborn, John I. Taylor, David S. Bray, and Isaac K. Lippincott, as purchasers thereof, that the sale would be deemed unfair and fraudulent, and be set aside and declared null and void; and they, said commissioners, the said James Hopping, and Leonard Walling, and Edward Taylor, also well knew, if they reported in due form of law that the said Ezra Os-

born, Richard C. Burrowes, and Isaac K. Lippincott, or John I. Taylor, were the purchasers, that such a report would have been untrue, and being made under oath according to the form and effect of the statutes or acts aforesaid, then in such case they, said commissioners, would be liable to prosecution for perjury; wherefore they were advised and determined to report, not that said Osborn, Burrowes, and Lippincott were the purchasers of said lands or real estate so numbered 5, 6, 7, 8, 9, 10, on said map, but in the words of the report of the commissioners in their report of the 20th day of January, 1830, purporting to be their report of the sale of said lands or real estate, they do represent and state "that the said commissioners had exposed the said real estate to sale on the 3d and 4th of November previous, by way of public vendue or outcry, to such persons and for such sums as are hereinafter" in their said pretended report set forth, to wit: "Lot No. 5, containing 59 acres, to Ezra Osborn, for $22 50 per acre; lot No. 6, containing 56 acres, to Ezra Osborn, for $13 25 per acre; lot No. 7, containing 48 acres, to Isaac K. Lippincott, for $25 25 per acre; lot No. 8, containing 24 acres, to Richard C. Burrowes, for $43 00 per acre; lot No. 9, containing seven acres, to Isaac K. Lippincott, for $18 50 per acre; lot No. 10, containing 16 acres, to Ezra Osborn, for $11 75 per acre."

And your orators and oratrixes show to your honors, that no other statement or report of said pretended sale of said lands or real estate was made or presented to the said orphan's court by said commissioners, and that their oath or affidavit to the truth of the statement, as above set forth and contained in the pretended report of said pretended sale, is merely nugatory and of no legal effect, and evasive; nor is the said pretended report of said pretended sale as having been made on the said third and fourth days of November, 1829, of any legal force, effect, or validity whatsoever, being merely insensible, insignificant, evasive, and fraudulent, and incapable of being amended now, even if the said James Hopping, one of the said commissioners, were now alive; but he has been long since dead, as your orators and oratrixes are informed and believe.

And your orators and oratrixes show, that the said report could not be now amended, because, if amended according to the truth of the case, showing in the report that said commissioners and guardian were purchasers, the report would be contrary to law, and the orphan's court must needs reject and set aside such a report so amended; neither could said report be amended by striking out the name of said Burrowes, Bray, and Lippincott, and inserting that of John I. Taylor, for he did not appear as purchaser at the sale, and such amended report would be untrue and unlawful, and inconsistent with said act above set forth. And your orators and oratrixes further show, that the orphan's court, relying upon the said commissioners' fidelity, oath, and responsibility, accepted said report without critical examination, and permitted it to be entered upon their records as having been approved, whereas in fact and in law it was not approved, nor in legal contemplation was the

said statement ever capable of being approved as a report of a sale by said commissioners, but was in fact and in law a mere nullity, and of no legal force or effect whatsoever.

Yet, nevertheless, as your orators and oratrixes further show, the said statement was recited as a commissioners' report of sale in the preamble of the order of said orphan's court directing said commissioners' to execute deeds of conveyance as aforesaid, which recital was set forth in said order of the orphan's court, directing conveyances as the legal and proper basis of said order, yet said order could have no legal efficacy because said report was false, fraudulent, unfair, and covertly concealed the real purchasers, was fraudulently obtained, and was legally insufficient through want of statements under the pains and penalties of perjury, to the effect that the persons who were put forward as purchasers were in fact the highest bidders, and that all the requirements of the law had been complied with by said commissioners.

And your orators and oratrixes show, that said order, or pretended order, directing said commissioners to execute deeds of conveyance, was therefore merely null and void, and of no legal effect whatsoever, nor would any deeds of conveyance of said lands or real estate so numbered on said map have been valid and of legal force and effect, if even the commissioners under said order had executed a deed of conveyance to said Ezra Osborn, Richard C. Burrowes, and Isaac K. Lippincott as the purchasers, concealing the fact, or withholding from the record the fact, that the said James Hopping and Leonard Walling were joint purchasers as aforesaid of the said lots of land; nor would such conveyances to said Ezra Osborn, Richard C. Burrowes, and Isaac K. Lippincott have been valid, inasmuch as the commissioners say in their said deed to John I. Taylor, that the said Ezra, Richard, and Isaac, whom they put forward to said orphan's court as purchasers, were not in fact the purchasers, which said deed was executed by said commissioners under their oath of office, set forth in the proceedings aforesaid in and before said orphan's court.

And your orators and oratrixes further show, that by force of the act of the legislature above recited or set forth, the deed aforesaid of said commissioners to said John I. Taylor, is declared to be null and void, and shall not be received in evidence as a valid deed until proof shall have been made to the satisfaction of the court before whom it may be offered in evidence, that the lands or real estate therein mentioned were sold fairly and without fraud.

And your orators and oratrixes submit to your honors that, upon the facts and circumstances above set forth, no legal or sufficient proof can be made to the satisfaction of this court that the lands or real estate so numbered 5, 6, 7, 8, 9, 10, on said map, were sold fairly and without fraud, or that said deed of conveyance to said John I. Taylor, was made and executed in good faith, and for a sufficient consideration, and with the consent of any person or persons who were legally reported as the purchaser or purchasers, or were in fact the legal purchaser or purchasers, thereof. The said Bray, Burrowes, and Lippin-

cott not being in fact the purchasers, nor legally reported as purchasers thereof.

And your orators and oratrixes further submit to your honors that, even if such deed or conveyance to said John I. Taylor were made and executed in good faith, and for a sufficient consideration, and with the consent of said Ezra Osborn, Richard C. Burrowes, and Isaac K. Lippincott, yet the said deed or conveyance could not have any legal force or effect, because they, said Osborn, Burrowes, and Lippincott, were not the purchasers of said lands or real estate so numbered 5, 6, 7, 8, 9, 10, nor were they legally reported as purchasers, nor was either of them legally reported as a purchaser of either of said lots; and no conveyance would have been valid, or of any legal effect, because, as the commissioners say, on their oath, in their said deed to said John I. Taylor, they, said Bray, Burrowes, and Lippincott, were not the purchasers of said lots so numbered 5, 6, 7, 8, 9, 10, but said Taylor was the purchaser thereof.

And your orators and oratrixes further show, that the said Osborn hath recently admitted in writing, viz., at Key Port, on the sixth day of May last past, by setting his signature to his own statements, taken down from his own mouth, that there was a company formed before the purchase of said lots 5, 6, 7, 8, 9, 10, consisting of eight persons, to wit, himself, Leonard Walling, Joseph Taylor, John I. Taylor, David S. Bray, John Hopping, James Hopping, and Isaac K. Lippincott, and that he purchased, as he is above represented as purchasing, for all of said persons, jointly with himself, and that no person was allowed to purchase said lots but the company consisting of said persons. And the said Lippincott hath admitted at several times, as your orators and oratrixes are informed and believe, that said commissioners and guardians were interested in said pretended sale of said lots at said pretended sale, and in fact, combined with him and the others to purchase the same in the names of said Bray, Burrowes, and Lippincott, and hath stated this fact in writing.

And your orators and oratrixes are informed and believe, that the said commissioners, and said Taylor as guardian, permitted all the pretended purchasers of all of the said real estate, whereof the said Edmund Kearney died seized and possessed as aforesaid, to enter upon all and every of the several portions of said estate, and to cut down and sell the timber and fuel from said several portions thereof, without giving any security, or paying any portion of the purchase money, but only on a verbal or parol agreement that they respectively would pay to said John I. Taylor the proceeds of the sales of said timber and fuel, and that said John I. Taylor did receive the same for the said commissioners and their associates herein mentioned, and pay over said moneys to them, as for the purchase money of said several portions of said estate, or to some of them for the rest, or otherwise, and that the amount so by him received for the said commissioners and their said associates, or for the said commissioners only, or for some one of them, greatly exceeded the whole amount of the purchase money for

which said pretended sale of the whole of said estate was made, and your orators and oratrixes aver that said permission was so given, and such terms and conditions of sale were so extended, to the purchasers of other lots of said real estate, that the lots numbered 5, 6, 7, 8, 9, 10, the better to conceal the fraud of said commissioners and their associates, and in order to secure the greater facility in managing the lots so numbered, in laying out the streets and lots, and erecting wharves upon the shores.

And your orators and oratrixes further show, that neither of your oratrixes, the said Anastasia, Catharine, or Ann, had come of age at the time of said pretended sale, but that the said Anastasia came of age on the eighth day of October, 1834, and the said Ann came of age upon the first day of June, 1839, and the said Catharine came of age upon the third day of June, 1837.

And your orators and oratrixes further show, that, according to the law of the State of New Jersey, under which said commissioners assumed to sell said real estate, and according to the course and usage of commissioners, acting under order of said orphan's court, the said commissioners ought to have prepared, adopted, and made known in a public manner, long previous to the offer of said real estate for sale, the true and real conditions of the sale proposed.

And your orators and oratrixes show to your honors, that the true and real conditions of the sale were as follows, viz., that the purchasers of the lots Nos. 5, 6, 7, 8, 9, 10, aforesaid, and of all the other lots of said real estate, should have right to enter forthwith after the auction upon the said lands or real estate, that is to say, upon the lots thereof of which they respectively should appear to be purchasers, and then and there have right to cut down, and carry away, and sell all the timber and fuel wood there growing, and thereby raise and provide the purchase money or price of and for their said several and respective lots of land, and therewith pay the said commissioners the said price or purchase money of the lots respectively which they respectively should purchase; provided, always, that the persons who should appear to be purchasers, and be recognised as such by said commissioners, should be approved of as such by said commissioners, or by them and their associates, the said Joseph Taylor, Ezra Osborn, John Hopping, David S. Bray, Isaac K. Lippincott, and John I. Taylor; but this one of the conditions of said proposed sale, though well understood by the said commissioners and their said associates last aforesaid, and by certain other persons who were expected to appear, and others who did appear, as purchasers of said lands, were not made public nor published at all. And your orators and oratrixes further show, that if such a condition were proper and lawful in such a case of sales of minors' property, it could not be so unless it were fairly made known by publication coextensively with the public notice of sale; and your orators show that this condition was not so made public, nor otherwise in any way or manner made public, nor was it known to all the persons who knew, or were apprised or informed, by the public advertisement of the sale,

that the said lands or real estate would be offered for sale on these terms and conditions; and by reason of the concealment of said true and real terms and conditions of sale, your orators and oratrixes show that the sale of said lands or real estate were in fact a mere sacrifice of the said property, unlawfully contrived and intended for the gain and benefit of said commissioners and their said associates, and to cheat and defraud your orators and oratrixes of the proceeds of the sale of said timber and fuel wood; and further, that if such terms and conditions had been made public co-extensively with the notice of sale, a competition would have been superinduced thereby greatly to the advantage of your orators and oratrixes, inasmuch as it would have been obvious to the whole public that the purchase of said real estate would have been a good bargain to the purchasers at the full worth of the timber and wood thereon, with the privilege of cutting and selling the timber and wood to pay one-half of the price in six months, and the residue in eighteen months after the sale, with or without interest, at the option of the purchaser, that is, without interest by giving security, and without security by paying interest, as were the further terms and conditions of said sale. And your orators and oratrixes show to your honors, that these terms and conditions were kept concealed in order to prevent this just and proper competition, and to secure the lands aforesaid at low prices to the favored few, viz., the commissioners aforesaid, James Hopping and Leonard Walling, and their associates last aforesaid, to wit, the said John I. Taylor, Joseph Taylor, John Hopping, Ezra Osborn, and Isaac K. Lippincott, and David S. Bray.

And your orators and oratrixes further show, that they are credibly informed, and believe, that the said Leonard Walling, some time before the vendue of said real estate, and of his making the aforesaid map, said that the Fishing Point lot, numbered eight on said map, would be a good place to build a dock or wharf, and a company ought to be formed and build a town, and have a packet, and that he was trying to pick out a company to join him for that purpose.

And your orators and oratrixes further show, that as they are informed, and believe, the persons who appeared as purchasers of said estate were related as follows, viz., Thomas Carhart, appearing as purchaser of lots Nos. 2 and 14, was a cousin of Leonard Walling, the commissioner as aforesaid; Amos Walling, appearing as purchaser of lot No. 3, was a cousin of said Leonard Walling; Ezra Osborn, appearing as purchaser of lots Nos. 5, 6, and 10, was a son-in-law of said Joseph Taylor, administrator and guardian as aforesaid; Richard C. Burrowes, appearing as purchaser of lot No. 8, was a son-in-law of said Joseph Taylor, administrator and guardian as aforesaid; James Sproule, appearing as purchaser of No. 11, was a connexion of said Joseph Taylor's wife; Thomas I. Walling, appearing as purchaser of lot No. 12, was a cousin of the said Leonard Walling; Amos Walling, appearing as purchaser of lot No. 13, was a cousin of said Leonard Walling; that Jonathan Tilton, who appeared as purchaser of lot No. 4, did not take

a deed thereof, but the deed of the said lot was executed by said commissioners to Joseph R. Walling, a cousin or brother of said Leonard Walling; that the deed or conveyance of the lots Nos. 5, 6, 7, 8, 9, 10, of which said Osborn, Burrowes, and Lippincott appeared as purchasers, was executed by said commissioners to said John I. Taylor, who was a son of said Joseph Taylor, administrator and guardian as aforesaid; that the deed or conveyance of lot No. 11, of which said James Sproule appeared as purchaser, was executed by said commissioners to said James Sproul, John Sproul, and Joseph Sproul, who were brothers and connexions of the wife of said Joseph Taylor; that the deed or conveyance of lot No. 13, of which Amos Walling appeared to be purchaser, was executed to said Amos Walling and William Walling, who were cousins of said Leonard Walling and Douglass E. Stout, who was a connexion of the wife of said Joseph Taylor.

And your orators and oratrixes show to your honors, that all the persons who appeared as purchasers of said lands or real estate, and to whom said estate was conveyed, were, as your orators and oratrixes are informed and believe, relatives or connexions of the said Joseph Taylor and Leonard Walling, excepting only the said Lippincott and the said Horatio N. Kearny. And further your orator, the said Horatio N. Kearny, says, that the price of lot No. 15, of which he appeared as purchaser, was $711 00, and the proceeds of the wood cut from said lot exceeded one thousand dollars; and he here again says, that he was deceived and kept in ignorance of the formation of any company, and of all the designs and combinations aforesaid by the said commissioners and guardian, and being without experience in business, he had not any suspicion at the time of the views of said commissioners and their associates.

But your orators have been informed and believe, that the whole sale of said real estate was managed unfairly and fraudulently, to obtain that part of said land which might be afterwards resold for building lots and other improvements, and which might be paid for out of the proceeds of the timber and wood which might be cut from the whole of said lots 5, 6, 7, 8, 9, 10; and the better to conceal their design, they extended to the purchasers of any lots the benefit of said terms and conditions, but in fact making these terms known only to the persons whom they were willing to admit as purchasers, so that the plan of the seaport intended might be carried into effect without opposition.

And your orators and oratrixes further state, that the said Daniel Holmes, immediately upon making his purchase as aforesaid from the said James P. Kearny, deceased, communicated to said Joseph Taylor his purpose of obtaining an order to sell the whole of said real estate, and that the said Joseph Taylor assented to the views of the said Daniel Holmes, and thereafterwards the said Joseph Taylor, and the said James Hopping and Leonard Walling, and Edward Taylor, with the assent and fraudulent collusion of the said Joseph Taylor, adopted and carried into effect, together with the said John I. Taylor, Ezra Osborn, John Hopping, and Isaac K. Lippincott, or some of them, the pretend-

ed sales of the said lands or real estate, and realized large proceeds from the sales of the timber and fuel wood cut from said real estate, whereof they have not yet rendered any statement, but have fraudulently concealed the amount of the said proceeds of sales of said lands or real estate as aforesaid.

And your orators and oratrixes further show, that the said Leonard Walling in his lifetime, and the said James Hopping in his lifetime, and Joseph Taylor in his lifetime, and John W. Holmes in his lifetime, respectively had, and their respective heirs, hereinafter named, since the decease of their respective ancestors, and the said John I. Taylor, David S. Bray, Ezra Osborn, John Hopping, Isaac K. Lippincott, have in their possession, as your orators and your oratrixes are informed and believed, divers portions or parcels of said land or real estate called Key Grove, which they claim to hold as theirs, jointly or severally, under said pretended sale, or pretended order of sale, made by said orphan's court as aforesaid, and which they claim to hold under said deed to said John I. Taylor, and to have right to sell and convey the same in fee simple to others, they, said Leonard Walling, James Hopping, Joseph Taylor, and John W. Holmes, not having disposed of all their respective shares of the said pretended purchase of said lots 5, 6, 7, 8, 9, 10, prior to their decease respectively; and your orators and your oratrixes have reason to apprehend, and are informed and believe, that they, said John I. Taylor, David S. Bray, Ezra Osborn, John Hopping, Isaac K. Lippincott, and the said heirs of said Leonard Walling, and of James Hopping, and of Joseph Taylor, and of John W. Holmes, intend to convey away to others such portion of said estate as they may have in their possession under said order of sale, or otherwise to encumber the same. And your orators and oratrixes further show, that said pretended order of sale, so as aforesaid made or given by said orphan's court, was, and is, merely void, and that all sales, or pretended sales, of any portions of said lands or real estate, called Key Grove as aforesaid, to any, all, or either, of said Leonard Walling, Edward Taylor, John I. Taylor, Joseph Taylor, James Hopping, John Hopping, Isaac K. Lippincott, David S. Bray, or Ezra Osborn, were, and are, all merely void; and that all and every parcel or portion of said lands or real estate, called Key Grove as aforesaid, which are now in the possession of said several persons, viz., the said heirs hereinafter named, respectively, of the said Leonard Walling, James Hopping, Joseph Taylor, and John W. Holmes, and in the possession of John I. Taylor, David S. Bray, Ezra Osborn, John Hopping, and Isaac K. Lippincott, and Edward Taylor, are in fact and in law held by them jointly and severally in trust for the use and benefit of your orators and your oratrixes; and your orators and oratrixes have claimed possession thereof at their hands long since, and well hoped that they, said tenants in trust, would have long since surrendered and delivered up said portions and parcels of said estate to your orators and oratrixes, as in equity and good conscience they should have done; but they, said Leonard Walling in his lifetime, and the said James Hopping in

his lifetime, and Joseph Taylor in his lifetime, and John W. Holmes in his lifetime, respectively refused, and their respective heirs hereinafter named, since the decease of their respective ancestors, and the said John I. Taylor, David S. Bray, Ezra Osborn, John Hopping, Isaac K. Lippincott, and Edward Taylor, have utterly refused and still do refuse, to surrender and deliver up said portions or parcels of said real estate, whereof they are now in possession, or have under their control, and they being all thereto duly requested, utterly refuse to render any statement of the proceeds of the sales of said timber and wood, so as aforesaid cut and sold by them or some of them, for all or some of them, and to deliver up said deed from said commissioners to John I. Taylor, to be cancelled; and they, all and each of them, pretend that they are not obliged, in law or in equity, to comply with any of your orators and oratrixes' said reasonable and lawful requests.

And your orators and oratrixes further state, that the said Daniel Holmes purchased the share of the said James P. Kearny, not with the purpose or design of retaining his said interest of one-seventh part of said lands or real estate, called Key Grove, in common and undivided, with your orators and oratrixes, until they all, or any of them, should attain the age of twenty-one years, nor with the view of obtaining a partition of said estate so that he might hold his said share and interest in severalty, but with the intent of compelling a sale thereof, so that a company of persons which he should form might purchase the part of said estate which could be most conveniently laid out in lots of land for building, and occupied as a seaport town, and thereby to realize a profit in the way of speculation, by the ways and means above set forth.

But finding afterwards that the interest which the said commissioners and guardian had taken in the said estate, by way of purchase, was contrary to justice and equity, and would avoid the purchase, he, the said Daniel Holmes, cautious for himself, declined being concerned as one of the company after the purchase of the lots numbered 5, 6, 7, 8, 9, 10, had been effected, for the said purpose of laying out thereon the building lots, or speculation as aforesaid, and withdrew from the said company, and now is owner of one-seventh of the said timber and wood, and entitled to the proceeds thereof, and interested in the portions of said lands or real estate held in possession by the said Leonard Walling in his lifetime, and by his heirs, said Theresa and others, since his death, Edward Taylor, John Hopping, John I. Taylor, David S. Bray, Ezra Osborn, and Isaac K. Lippincott, and he, the said Daniel Holmes, has some right to claim an account of said proceeds, and to restrain the said tenants from conveying to strangers the said lands so in their possession. Yet said Daniel will not concur and co-operate with your orators and oratrixes in filing this bill of complaint, but refuses, in truth, and in fact, because the said Leonard Walling and his said confederates were induced by him, said Daniel, to enter upon said speculation, but said Daniel untruly pretends that the said Walling and his confederates made the said sale fairly, and without fraud, against your

orators and oratrixes, that the purchase money received by the commissioners for the whole estate was equal to the full value of the estate, although less than the nett proceeds of the timber and wood cut therefrom, carried away, and sold as aforesaid.

And your orators and oratrixes further show, that the said John W. Holmes is long since deceased, leaving no children, nor widow; that said John W. Holmes died intestate as to all interest, right, claim, or property, in the premises, and that all his said right, title, interest, and claim whatsoever descended and came to his sisters, viz., Sarah and Catharine, who will not consent to be made parties complainant in this bill, nor will the husband of said Sarah, viz., Samuel Holmes, of said Monmouth.

And your orators and oratrixes further show, that in the making of said plan of said lands, after a survey thereof, the quantity of land contained in said real estate is not truly stated in said plan, but a less quantity of land is stated upon said plan, in several of the lots into which it is divided, than said lots do really contain by strict measurements within their metes and boundary lines, whereby a great loss in the computation of the purchase money was in fact intended, and if said sale of said lots should be held valid, a great loss and damage would be unfairly and fraudulently sustained and suffered by your orators and oratrixes in the premises.

And your orators and oratrixes further show, that the said James Hopping, John Hopping, Ezra Osborn, David S. Bray, Leonard Walling, Joseph Taylor, and Isaac K. Lippincott, by the power of attorney to said John I. Taylor, bearing date a short time after said sale, admit, by way of recital, the said John I. Taylor therewith concurring, that they were tenants in common of said lots so numbered as aforesaid, and described in the deed of said commissioners to said John I. Taylor, and thereby authorize him to sell the same at his discretion, and that said John I. Taylor thereafterwards did sell divers parcels thereof, with usual covenants of warranty on behalf of said confederates. But your orators and oratrixes show to your honors that there are covenants in the deed aforesaid, of said commissioners to said John I. Taylor, which run with the land, and of which the grantees of said John I. Taylor, their heirs and assigns, can avail themselves, and upon which any of them may maintain any actions at law for damages against said commissioners, although said deed be decreed to be null and void as a conveyance, but retained as a deed of covenants. And your orators and oratrixes further show, that the said constituents, and his said attorney, afterwards executed a certain deed of partition amongst them, of the rest of said lands or lots so numbered as aforesaid, wherein they, in effect, admit their joint interest and concern in the land described in the said deed of the commissioners to said John I. Taylor, as will appear by reference to said power of attorney and deed of partition, when produced, and to which, or authenticated copies thereof, reference is here made for greater certainty.

And your orators and oratrixes further show, that although the said

pretended sale and deed to said John I. Taylor are utterly void, and cannot be made valid, yet the said confederates and all the actual occupants of said real estate, amounting to several hundred persons, claiming to hold parts and parcels of said lots so numbered as aforesaid on said plan, and others holding possession of, and claiming title to, other parts of said estate of Key Grove, have openly declared their intention to exclude therefrom your orators and oratrixes, and to resist by every means in their power, however unlawful, all the legal proceedings of your orators and oratrixes instituted, and which may be instituted, for the recovery of said property, threatening another "Helderberg war" against these complainants; and your orators and oratrixes further show, that although the defence of said ter-tenants of the lots 5, 6, 7, 8, 9, 10, stands chiefly upon the application and bearing of the act of the legislature of New Jersey, above set forth, and it is manifest upon the records aforesaid of said orphan's court, and the deed of the commissioners to John I. Taylor aforesaid, and upon other deeds of said confederates, stated and charged in this bill of complaint, that said deed is not within the provisions of said act, but said deed is void to said John I. Taylor, upon the decision of Den *vs.* Lambert aforesaid, and not helped by said act of said legislature; yet your orators and oratrixes must needs prosecute a great multiplicity of suits and actions against the numerous tenants now in actual possession of said real estate, who claim to hold under the said confederates or the said John I. Taylor, by deeds of conveyance, with warranty or otherwise, from them or him, and in each and every action against said ter-tenants the defence must needs be the same, viz., the validity of said sale, and of said deed to John I. Taylor; and that the decision in no case or number of cases against said ter-tenants will be conclusive against them, or quiet the claims of title by said tenants, under their respective deeds of conveyance from said John I. Taylor, or said confederates, or settle definitely and finally the title of your orators and oratrixes; but your orators and oratrixes will be subject to perpetual disturbance of their title, and deprived of all peaceable enjoyment of their inheritance, and be put to a very great and unreasonable expense and charges about such actions, unless this honorable court will direct evidence to be taken, and a hearing to be had, as soon as may be, before this honorable court, in equity; or direct a special issue to be tried on the law side of this court, upon the validity of said sale of said real estate, described in said plan as lots numbered 5, 6, 7, 8, 9, 10, and the deed of conveyance thereof, by said commissioners to said John I. Taylor, and will thereafterwards grant a perpetual injunction to stay all suits and actions, by said confederates or persons claiming under said sale, against your orators and oratrixes, their heirs and assigns.

And your orators and oratrixes further show to your honors that some of the said ter-tenants of said lots 5, 6, 7, 8, 9, 10, have threatened to lay waste the said real estate, and to destroy the buildings, constructions, and improvements thereon, and also the timber and wood thereon standing, if your orators and oratrixes should prevail in their legal

remedies for recovery of said real estate. And your orators and oratrixes further show that they commenced two actions of ejectment about a year since on the law side of this honorable court, the one in fact against the aforesaid Leonard Walling, who appeared at the last April term and entered into the consent rule, and took issue upon the declaration filed de novo against him; and the other in fact against William H. Jacques, whose landlord, one Oliver Vanderbilt, appeared at the last April term, and admitting his possession of part only of lots No. 8 and 9, entered into the consent rule and took issue, the general issue upon the declaration filed de novo against him; that by the death of said Leonard Walling, in July or August last, the said action against him has abated, but the action against said Vanderbilt is now pending in this honorable court, on the law side thereof, is at issue; and the said defendant has ruled your orators and oratrixes to bring on the trial thereof at the next law term of this court.

And your orators and oratrixes further show, that the number of ter-tenants against whom actions must be brought to recover said real estate, so numbered as aforesaid, is not only large, exceeding forty persons, as your orators are informed and believe, but your orators and oratrixes have been deterred from making inquiries and ascertaining who are the occupants of the several parcels of said lots, by threats of violence to the agents of your orators and oratrixes, who should attempt to visit said town of Key-Port for such or any other like purpose. But your orators and oratrixes, on their part, have nevertheless requested said claimants in possession, and said confederates in particular, to come to some friendly understanding with your orators and oratrixes in respect to the premises.

And your orators and oratrixes well hoped that the said confederates would have surrendered their possession of said real estate, and not have constrained your orators and oratrixes to bring a multiplicity of suits against said numerous ter-tenants, nor resisted by threats of violence any declarations of their intentions to hold out your orators and oratrixes from the recovery of possession of their said inheritance by protracted litigation and delays, and by personal violence, even after such recovery shall be had, as above is set forth and stated.

But now, so it is, may it please your honors, that the said John I. Taylor, Edward Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Daniel Holmes, combining and confederating together with the heirs of said Leonard Walling, viz., his children, Theresa, Catharine, Adeline, and Washington, and with the heirs of John W. Holmes aforesaid, viz., his sisters, Sarah, who married Samuel Holmes, and with said Samuel, Catharine, who is yet unmarried; and with the heirs of said James Hopping, deceased, viz., his sons, Edward and John, and his daughters, Sarah, who married Thomas Leonard, and with said Thomas, and with Mary, who married James Frost, and with said James; and with the heirs of the said Joseph Taylor, guardian aforesaid, deceased, viz., his sons, John I. Taylor and Samuel, and his daughters, Hannah, who married Ezra Osborn, Mary, who married

pretended sale and deed to said John I. Taylor are utterly void, and cannot be made valid, yet the said confederates and all the actual occupants of said real estate, amounting to several hundred persons, claiming to hold parts and parcels of said lots so numbered as aforesaid on said plan, and others holding possession of, and claiming title to, other parts of said estate of Key Grove, have openly declared their intention to exclude therefrom your orators and oratrixes, and to resist by every means in their power, however unlawful, all the legal proceedings of your orators and oratrixes instituted, and which may be instituted, for the recovery of said property, threatening another "Helderberg war" against these complainants; and your orators and oratrixes further show, that although the defence of said ter-tenants of the lots 5, 6, 7, 8, 9, 10, stands chiefly upon the application and bearing of the act of the legislature of New Jersey, above set forth, and it is manifest upon the records aforesaid of said orphan's court, and the deed of the commissioners to John I. Taylor aforesaid, and upon other deeds of said confederates, stated and charged in this bill of complaint, that said deed is not within the provisions of said act, but said deed is void to said John I. Taylor, upon the decision of Den *vs.* Lambert aforesaid, and not helped by said act of said legislature; yet your orators and oratrixes must needs prosecute a great multiplicity of suits and actions against the numerous tenants now in actual possession of said real estate, who claim to hold under the said confederates or the said John I. Taylor, by deeds of conveyance, with warranty or otherwise, from them or him, and in each and every action against said ter-tenants the defence must needs be the same, viz., the validity of said sale, and of said deed to John I. Taylor; and that the decision in no case or number of cases against said ter-tenants will be conclusive against them, or quiet the claims of title by said tenants, under their respective deeds of conveyance from said John I. Taylor, or said confederates, or settle definitely and finally the title of your orators and oratrixes; but your orators and oratrixes will be subject to perpetual disturbance of their title, and deprived of all peaceable enjoyment of their inheritance, and be put to a very great and unreasonable expense and charges about such actions, unless this honorable court will direct evidence to be taken, and a hearing to be had, as soon as may be, before this honorable court, in equity; or direct a special issue to be tried on the law side of this court, upon the validity of said sale of said real estate, described in said plan as lots numbered 5, 6, 7, 8, 9, 10, and the deed of conveyance thereof, by said commissioners to said John I. Taylor, and will thereafterwards grant a perpetual injunction to stay all suits and actions, by said confederates or persons claiming under said sale, against your orators and oratrixes, their heirs and assigns.

And your orators and oratrixes further show to your honors that some of the said ter-tenants of said lots 5, 6, 7, 8, 9, 10, have threatened to lay waste the said real estate, and to destroy the buildings, constructions, and improvements thereon, and also the timber and wood thereon standing, if your orators and oratrixes should prevail in their legal

remedies for recovery of said real estate. And your orators and oratrixes further show that they commenced two actions of ejectment about a year since on the law side of this honorable court, the one in fact against the aforesaid Leonard Walling, who appeared at the last April term and entered into the consent rule, and took issue upon the declaration filed de novo against him; and the other in fact against William H. Jacques, whose landlord, one Oliver Vanderbilt, appeared at the last April term, and admitting his possession of part only of lots No. 8 and 9, entered into the consent rule and took issue, the general issue upon the declaration filed de novo against him; that by the death of said Leonard Walling, in July or August last, the said action against him has abated, but the action against said Vanderbilt is now pending in this honorable court, on the law side thereof, is at issue; and the said defendant has ruled your orators and oratrixes to bring on the trial thereof at the next law term of this court.

And your orators and oratrixes further show, that the number of ter-tenants against whom actions must be brought to recover said real estate, so numbered as aforesaid, is not only large, exceeding forty persons, as your orators are informed and believe, but your orators and oratrixes have been deterred from making inquiries and ascertaining who are the occupants of the several parcels of said lots, by threats of violence to the agents of your orators and oratrixes, who should attempt to visit said town of Key-Port for such or any other like purpose. But your orators and oratrixes, on their part, have nevertheless requested said claimants in possession, and said confederates in particular, to come to some friendly understanding with your orators and oratrixes in respect to the premises.

And your orators and oratrixes well hoped that the said confederates would have surrendered their possession of said real estate, and not have constrained your orators and oratrixes to bring a multiplicity of suits against said numerous ter-tenants, nor resisted by threats of violence any declarations of their intentions to hold out your orators and oratrixes from the recovery of possession of their said inheritance by protracted litigation and delays, and by personal violence, even after such recovery shall be had, as above is set forth and stated.

But now, so it is, may it please your honors, that the said John I. Taylor, Edward Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Daniel Holmes, combining and confederating together with the heirs of said Leonard Walling, viz., his children, Theresa, Catharine, Adeline, and Washington, and with the heirs of John W. Holmes aforesaid, viz., his sisters, Sarah, who married Samuel Holmes, and with said Samuel, Catharine, who is yet unmarried; and with the heirs of said James Hopping, deceased, viz., his sons, Edward and John, and his daughters, Sarah, who married Thomas Leonard, and with said Thomas, and with Mary, who married James Frost, and with said James; and with the heirs of the said Joseph Taylor, guardian aforesaid, deceased, viz., his sons, John I. Taylor and Samuel, and his daughters, Hannah, who married Ezra Osborn, Mary, who married

Richard C. Burrowes, and with said Richard; Elizabeth, who married John Michaux, and with said John; Martha, who married Thomas Fields, and with said Thomas; and Sarah, who married Gilbert Van Mater, and with said Gilbert, and with said Joseph Taylor's daughter Huldah, who is still unmarried; all the said confederates being now resident in the State of New Jersey, to wit, in the county of Monmouth, and all and each of them are citizens of the State of New Jersey; and also with divers other persons at present unknown to your orators and oratrixes, whose names, when discovered, your orators and oratrixes pray they may be at liberty to insert herein, with apt words to charge them as parties defendants herein, and contriving how to wrong and injure your orators and oratrixes in the premises, they the said confederates absolutely refuse to comply with the said reasonable requests of your orators and oratrixes, but claiming to have title to said lands or lots so numbered as aforesaid, they have sold several parcels thereof, and offer the rest for sale, and continue to commit waste upon such of them as are now in their possession; and for reason thereof, and by way of justification, they sometimes pretend that said Daniel Holmes purchased one-seventh of said real estate, without any intent whatever to bring about any sale thereof, but only for the purpose of making an investment for security, and to obtain lawful interest upon his money, viz., two thousand dollars therein invested. Whereas your orators and oratrixes charge the contrary thereof is the truth, and that said Daniel Holmes did *it* in his own name, and in that of his said cousin, John W. Holmes, make a purchase of the said James P. Kearny, of his interest, to wit, one-seventh part of said estate, for the purpose and with the intent of applying to the orphan's court for said county of Monmouth ostensibly for an order of partition of said estate, but in fact with the purpose and expectation of procuring to be made, by the persons whom he should procure to be appointed commissioners under the order of said court for partition, a report that no partition thereof could be practicable without prejudice to the owners thereof, and thereby obtain an order for the sale of the whole property.

And your orator and oratrixes charge, that the said Daniel Holmes, so being owner of one seventh part of said estate, commmunicated, viz., immediately after the said purchase, verbally, with and to said Joseph Taylor, the administrator of said estate of said Edmund Kearny, and guardian as aforesaid of certain of your orators and oratrixes, the other guardian, Stillwell, being appointed subsequently guardian of said Mary E. Kearny, now deceased; and your orators and oratrixes charge that said Joseph Taylor was fully informed of, and understood from, said Daniel Holmes his purpose of bringing about a report to the above effect, and thereby obtaining an order for sale of the whole of said estate, consisting of nine hundred and sixty acres and upwards, with a view to the formation of a plan of a town and seaport on the premises, and to setting up building lots thereon for sale upon speculation; and the said Joseph Taylor assented to said design of said Daniel Holmes, and therewith concurring, the said Joseph Taylor being administrator

of your orators' late father, and guardian of your orators and oratrixes, then under age as aforesaid; that the aforesaid James Hopping, Edward Taylor, a cousin of said Joseph's, and the said Leonard Walling, were thereafterwards accordingly selected and named to said orphan's court as the commissioners on said Daniel Holmes's application for partition; and the said James, Edward, and Leonard being consulted, they agreed to serve as such commissioners, and were accordingly appointed by the judges of said orphan's court to serve and act as such commissioners, and agreed accordingly to make a report that no partition of said estate was practicable without injury to the interest of the owners; and your orators and oratrixes charge, that in and by the laws of the State of New Jersey, under which said commissioners were appointed, and whereby they were authorized to proceed in the partition of said lands or real estate, it was provided that such commissioners might report to such orphan's court that a partition of such lands or real estate would be impracticable without injury to the interests of owners thereof, if such should be the opinion of such commissioners upon survey and examination of the premises; and they, said commissioners, would so report upon or under oath without any covin, fraud, or collusion whatsoever; and moreover, should produce to said judges of said orphan's court, together with said report, some further satisfactory proof or evidence, under oath, confirming and sustaining their said opinion.

And your orators and oratrixes further states to your honors, and do charge, that the above named commissioners reported to the effect that the partition was impracticable, unfairly and with fraud, so as thereby to cause, or procure to be issued or made, the order of sale which thereafterwards was issued as above is set forth; but they never did produce to said judge any evidence whatever in support of their said opinion, that the said lands or real estate could not be divided without injury to the owners thereof; and your orators and oratrixes, referring to the original report of the above named commissioners, signed and sealed by them as herein above is shown, upon the tenth day of July, in the year 1829, and the entry thereon of the proceedings of said court, made and signed by Judge Patterson, do further state and charge, that by said entry of said proceedings under the hands of said Judge Patterson, it does appear conclusively that no evidence was produced under oath to said court in support of said commissioners' said opinion, said Chief Justice Patterson referring only and exclusively to the statement of said commissioners, and to the court's being satisfied therewith, and thereupon ordering the said commissioners to make sale of said lands and real estate; and your orators and oratrixes further state and charge, that in the order at large, viz., of the July term of the said orphan's court, founded upon said entry by said Judge Patterson, endorsed by him upon said original report of said above named commissioners, it was, by and through the procurement of said commissioners and said guardian and others, their associates, falsely and fraudulently set forth and alleged, that it appeared by satisfactory proof to said court that the said tract of land or real estate could not be partitioned among the own-

ers and proprietors thereof without great prejudice to their interest; whereas, in fact, no proof whatever was produced to said court, but the judges of said court were induced to grant said order, and did unlawfully grant the same only upon the assent of the guardians aforesaid concurring with the representations and statements of said above named commissioners, so as aforesaid unfairly and fraudulently intended and made to defraud your orators and oratrixes, as herein before set forth and charged.

And your orators further state and charge, that upon said fraudulent assent and concurring statements of said guardians and commissioners, and not upon the satisfactory proof which the laws of the State then and ever since required as the basis of an order for sale in such cases, the said judges of said orphan's court did then and there, viz., at said Monmouth county, in the July term of said court, in the year 1829, grant their further order upon the said petition and application of said Daniel Holmes, viz., an order for the sale of the said lands and real estate as above is set forth, and by these unfair and fraudulent means an order for the sale of the said lands and real estate was obtained, and not in the fair and just and due course of legal proceedings.

And your orators and oratrixes further charge, that in view of obtaining such order of sale from said court, the said Daniel Holmes, Joseph Taylor, Richard C. Burrowes, Ezra Osborn and Isaac K. Lippincott, and Primrose Hopping, a brother of said James Hopping, the commissioner, formed a company, together with said James Hopping and Leonard Walling, to purchase said lots numbered 5, 6, 7, 8, 9, 10. But before actual possession of said lots was given to said purchasers, the said Daniel Holmes and Richard C. Burrowes declined further action in said combination, and the company thereafterwards consisted of said James Hopping, Leonard Walling, Joseph Taylor and John I. Taylor, son of said Joseph, David S. Bray, Ezra Osborn and Isaac K. Lippincott, and John Hopping, who became, by the terms of their association and combination together, the only partners and parties in interest in said lots, and by the terms of their agreement they were permitted by the said commissioners and guardians to enter upon said lots, and to cut down and carry away the timber and wood growing thereon, and sell the same; and they did thereafterwards enter upon said lots, cut down said timber and wood, and sell the same, and realized therefrom, a large sum of money, to wit, the sum of thirty thousand dollars, before the execution of any deed of conveyance to them or either of them, and before any legal order of said orphan's court approving and confirming the pretended auction sale above mentioned, and then and there, and always since, have claimed to have, receive, and enjoy the same proceeds; and the said James and John Hopping, Leonard Walling, Joseph Taylor, John I. Taylor, David S. Bray, Ezra Osborn, and Isaac K. Lippincott, have always pretended, and the survivors of them, and the heirs of the deceased as aforesaid do now pretend, that they had and have legal right to claim, and receive, and enjoy, the said proceeds of sales of said timber and wood to their own use and benefit, under and

by force of the sale of the said lots numbered 5, 6, 7, 8, 9, 10, which they pretend that said commissioners made to said John I. Taylor in his name, but for their use and benefit jointly, as tenants in common in equity, and that said sale was duly made and reported by the said commissioners to the judges of said orphan's court, was duly allowed by them, and a conveyance of said lots was thereafterwards duly ordered by said court, and was duly executed by said commisioners to the said John I. Taylor without any unfairness or fraud whatever, as by reference to said proceedings of said commissioners, and to their deed of conveyance aforesaid, to said John I. Taylor, and to all the facts and circumstances, actings and doings, of said commissioners and their said associates in the premises will appear.

Whereas your orators and oratrixes charge the contrary thereof as true, and that there is no record of proceedings of said commissioners which show that said James and John Hopping, Leonard Walling, Jos. Taylor, John I. Taylor, David S. Bray, Ezra Osborn, and Isaac K. Lippincott, were the purchasers of said lots numbered 5, 6, 7, 8, 9, 10, nor that said John I. Taylor was the purchaser thereof for them or on his own account, and to his own use and benefit, nor that said Isaac K. Lippincott, Ezra Osborn, or other person, were the purchasers of said lots; nor does it appear, from or by any proceedings in the said orphan's court, or by any report of said commissioners, that any persons were in fact the purchasers of said lots at the pretended auction sale thereof pretended to be made by said commissioners. And your orators and oratrixes charge, that the only deed executed by said commissioners, purporting to convey the said lots 5, 6, 7, 8, 9, 10, was their deed aforesaid to said John I. Taylor, and that this deed is falsified in their pretended report that Richard C. Burrowes, Ezra Osborn, and Isaac K. Lippincott, were the purchasers, by a certain deed of partition, bearing date the 21st day of May, 1832, between said James Hopping, Ezra Osborn, John I. Taylor, David S. Bray, Leonard Walling, Joseph Taylor, and Isaac K. Lippincott, to the effect that they, said partitioners, as tenants in common of said lots so as aforesaid numbered 5, 6, 7, 8, 9, 10, did thereby divide and assign, allot and convey, to each other, in severalty, certain portions therein described of the said lots numbered 5, 6, 7, 8, 9, 10, as by reference to said deed in the possession of some of them, or to an authenticated copy thereof from the registry of deeds in said county, will appear; and your orators and oratrixes, for greater certainty, pray leave to refer to the said original deed of partition, or to an authenticated copy thereof, when produced; said deed bearing date the 21st day of May, A. D., 1832, and being executed by James Hopping, John Hopping, Ezra Osborn, John I. Taylor, David S. Bray, Leonard Walling, Jos. Taylor, Isaac K. Lippincott; and your orators charge that the aforesaid recital of the said commissioners in their said deed to John I. Taylor, to the effect that the said lots were purchased for said John I. Taylor, is also falsified by a certain other deed in which the said James Hopping and Leonard Walling were parties, together with said Joseph Taylor, John I. Taylor, Ezra Osborn, Isaac K. Lippincott,

John Hopping, David S. Bray, and John I. Taylor, viz., a power of attorney to said John I. Taylor from the others of said last above-named persons, bearing date the 24th day of May, in the year 1834, to the original or an authenticated copy whereof, when produced, reference is here made for greater certainty, wherein it is recited that that they all are seized in fee as tenants in common of certain lands, consisting, as these complainants charge, in part or in whole of said lots so as aforesaid numbered 5, 6, 7, 8, 9, 10, and thereupon they thereby authorize and empower the said John I. Taylor to sell and convey said lands for and in their behalf, and to receive the purchase money or securities, for such sales as he shall make, to their use and benefit; which said agency and trust the said John I. Taylor thereafterwards acccepted and undertook to perform.

And your orators and oratrixes further charge, that under pretence of said sales of said lots, and of the said deed of said commissioners to said John I. Taylor, and of said deed of partition, and of said power of attorney, the said lands or real estate, numbered 5, 6, 7, 8, 9, 10, as aforesaid, is now held by some or all of said associates, and by persons claiming under said deed and power of attorney, who may or may not, in respect to their legal rights and title, be justified in holding out your orators; but, however this may be in respect to such ter-tenants other than these associates, your orators and oratrixes charge, in respect to these confederates, that your orators and oratrixes have no legal remedy whereby they can recover, against said commissioners and their said associates, the amount of said proceeds of the said sales of timber and wood cut and sold from the said lands or real estate of your orators and oratrixes, which have come to the hands of said confederates, nor the value of such as has been destroyed or used on the premises, save by a due course of equity in this honorable court; and your orators and oratrixes, charge that the said commissioners and guardian, and their said associates, as purchasers of said lots numbered 5, 6, 7, 8, 9, 10, and the said Daniel Holmes, have kept concealed, and said James Hopping and Joseph Taylor, in their lifetime, and the rest of said confederates ever since, do keep concealed, and utterly refuse to discover, the quantity of the timber or wood cut from said lots, and from other lots into which said land or real estate were divided for the purpose of sale, under orders of said orphan's court, and which were, as they pretend, sold, and whereof the proceeds of sales came to the hands of said Leonard Walling and Edward Taylor, commissioners as aforesaid, and of their said associates, some or all of them.

And your orators and oratrixes do further charge, that they are entitled to a discovery of all the wood and timber cut and carried away from said estate and sold, whereof the proceeds came to the hands of said commissioners and their said associates, and to an account of said proceeds, and of the value of such as has been destroyed or used on the premises, as evidencing the fraud perpetrated in the sale of said estate.

And your orators and oratrixes do further charge, that if the said proceedings had been legal, in due form of law, and in all other respects

valid, yet that the participation by said James Hopping and Leonard Walling, commissioners as aforesaid, and by the said Joseph Taylor, guardian as aforesaid, is fraudulent in law, and precludes all legal validity from said pretended sale, so that the said deed of said conveyance to said John I. Taylor, for the benefit of said commissioners and guardian, and their associates, as tenants in common or otherwise howsoever, is utterly void in law and equity, to him and to all those for whose use and benefit the said deed of conveyance to him was executed as aforesaid.

And your orators further charge, that the statute law enacted at the last session of the legislature of New Jersey, and herein above set forth, does not apply to the deed of conveyance of lands sold by commissioners, of which said lands, or any part of or interest in them, they, said commissioners, or either of them, were or was directly or indirectly purchasers, or intended to become so at the time of the sale of such lands, because such sale is a fraud on your orators and oratrixes as aforesaid; and sometimes the said confederates pretend that the said statute of the legislature, herein above set forth, enacts that the said deed of conveyance of said commissioners to said John I. Taylor shall be valid and effectual to convey the said lands or real estate therein described, viz., the said lots numbered as aforesaid, 5, 6, 7, 8, 9, 10, unto the said John I. Taylor, his heirs and assigns forever, in fee simple; whereas, your orators and oratrixes charge the contrary thereof, and that the said deed ever was and is void and invalid in law, and cannot be received in evidence, nor held valid and effectual in law to convey or vest in said John I. Taylor any interest in the real estate therein described; that no proof to the satisfaction of any court or jury before whom such deed or conveyance might be offered in evidence can be made; that the lands or real estate therein mentioned were sold fairly and without fraud, or that such deed or conveyance was made and executed in good faith and for a sufficient consideration, and with the consent of any person or persons legally reported to the orphan's court as the purchaser or purchasers; because the said lands or real estate described in said deed were not duly sold by said commissioners, nor was any sale duly made thereof, or legally reported to, and approved and confirmed by, the orphan's court of said county of Monmouth, or any proper court; nor has there been any rule or order of such court legally made directing said commissioners to execute good and sufficient conveyances in the law to any purchasers of said lands or real estate as being sold to them; nor were the said David S. Bray, Ezra Osborn, and Isaac K. Lippincott, or either of them, legally reported as purchasers of said lots so numbered as aforesaid, nor was said John I. Taylor reported as a purchaser thereof, nor have said commissioners received from any person any sum of money legally, as the price of said lands or real estate, but only the proceeds of the sales of timber and wood of your orators and oratrixes as aforesaid.

And your orators and oratrixes do further charge, that all the matters herein before stated or set forth are true, and especially that said

order of sale was fraudulently obtained, without satisfactory proof being made to said orphan's court that the said land or real estate was so circumstanced that a partition thereof could not be made without great prejudice to the owners of the same; and further, that it did not appear to said court, by satisfactory proof, which the law then as now required, that the said land or real estate, called Key Grove, could not be partitioned or divided between the owners and proprietors thereof, viz., the said Daniel Holmes and John W. Holmes, and your orators and oratrixes, without great prejudice to their interest therein; but on the contrary, your orators and oratrixes charge that a partition thereof might have been made without any prejudice to the interests of said owners and proprietors, and that said report so made by said commissioners—to the effect that the partition of said real estate could not be made without injury to the owners—was falsely and fraudulently made to deceive the judges of said orphan's court, and thereby to obtain their order for the sale of said real estate, and that the order of said court authorizing the said sale of said lots so numbered, 5, 6, 7, 8, 9, 10, was fraudulently obtained by said confederates, some or all of them; and the order of said court purporting to approve the pretended sales of said lots, 5, 6, 7, 8, 9, and 10, stated, mentioned by way of report to said orphan's court by said commissioners, was also fraudulently obtained by said commissioners as aforesaid, and their associates; and the order of said court directing the said commissioners to execute deeds of conveyance to the persons appearing as purchasers of said lots numbered 5, 6, 7, 8, 9, 10, was also fraudulently obtained, and each and every of said orders, so far as they respect the said lots numbered 5, 6, 7, 8, 9, 10, are utterly void in law.

And sometimes the said confederates pretend, that the said deed of conveyance by said commissioners to said John I. Taylor is within the provisions of the statute law of New Jersey herein above set forth and referred to, and that said deed of conveyance is valid, and good, and sufficient in law to convey the estate therein described, and vest the said lands or lots so numbered 7, 6, 7, 8, 9, 10, to and in the said John I. Taylor, his heirs and assigns forever, in fee simple; that all the proceedings, orders, and acts of said commissioners, and of said court, are regular, legal, and free from all fraud whatsoever. Whereas your orators and oratrixes charge the contrary thereof is true, and that all the proceedings, orders, and acts of said court and commissioners, were and are irregular, illegal, and void, as herein above is stated and charged; and that said deed is and ever was null and void, and not within the provisions of the said statute law of New Jersey, as herein above is shown, stated and charged.

And sometimes the said confederates pretend, that they have not received nor realized any proceeds of sales of timber and wood cut from said lots numbered 5, 6, 7, 8, 9, 10, nor any other lot, of said real estate described in said map or plan. Whereas your orators and oratrixes charge the contrary is the truth, and that the said confederates, some or all of them, have received large sums of money, being pro-

ceeds of the said timber and wood, exceeding by many thousands of dollars the whole amount of the purchase money named in the pretended report of sale by said commissioners above stated as the sum of all the purchase money of all the said estate, and certainly of all the purchase money of all the said lots numbered 5, 6, 7, 8, 9, 10, mentioned in said pretended report of sale above set forth. And your orators and oratrixes charge, that thereof no account has been shown or rendered to them, or any person for them.

And sometimes the said confederates pretend, that they had right to keep all the proceeds of sales of said timber and wood realized from said lots, numbered 5, 6, 7, 8, 9, 10, without impeachment of waste, or accountability, or responsibility to any person whatsoever, they being purchasers of said lots numbered 5, 6, 7, 8, 9, 10. Whereas your orators and oratrixes charge the contrary to be true, and that they, said confederates, had not any legal or equitable right to receive all said proceeds to their own use and benefit, and that they, said confederates, nor any of them, were not purchasers of said lots.

And sometimes the said confederates pretend, that they are not accountable to your orators and oratrixes for any of the proceeds of sales of timber and wood realized by them, or any of them, from and out of other lots than the said lots numbered 5, 6, 7, 8, 9, 10. Whereas your orators and oratrixes charge the contrary to be the truth and the law, and that said confederates are bound and obliged to render account, and pay over to your orators and oratrixes all the said proceeds of timber and wood realized by them out of any and every part of said real estate, and the value of all that has been destroyed or used on the premises. And sometimes the said confederates pretend, that they do not design to commit any further waste in said lots numbered 5, 6, 7, 8, 9, 10, nor to sell or dispose of the same. Whereas your orators and oratrixes charge the contrary to be the truth, and that said confederates do intend to commit further waste in the premises, and to sell and dispose of the same as soon as may be, to defeat and embarrass the just and lawful claims of these complainants.

And sometimes the said confederates deny all the matters and things, acts and deeds, herein above stated, and pretend that they are not true in manner and to the effect herein above alleged, stated, and set forth. Whereas your orators and oratrixes charge that all the matters and things, acts and deeds, and statements herein above stated are true, correct, and can be proved to the effect herein above stated and alleged.

All which said actings, doings and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orators and oratrixes in the premises.

In tender consideration whereof, and forasmuch as your orators and oratrixes are remediless in the premises, by the strict rules of the common law, and relievable only in a court of equity, where matters of this nature are properly cognizable. To the end, therefore, that the said confederates may respectively, upon their corporal oath in due form of law, full, true, and perfect answer make to all and singular the mat-

ters herein above stated, alleged and charged, as fully in every respect as if the same were here again repeated, and they respectively thereto particularly interrogated, and more especially that they may individually set forth and show to your honors the quantity of wood cut from each and every of said lots laid down upon said map of said estate made by said Leonard Walling, and of which a copy is hereto annexed, and this according to their own knowledge, or best information, and belief, and especially that they may answer and say where the same was cut, and when, and by whom carried away, and to whom sold, and for how much money, and how much of said timber and wood was consumed, or used upon or near said real estate, and not sold nor disposed of for money; and whether they have not sold a large portion of said lots numbered 5, 6, 7, 8, 9, 10, and how much, and to whom, and for what consideration or price, and who are now in possession, claiming to be owners of said land so numbered on said plan 5, 6, 7, 8, 9, 10, and whether they do not intend to sell and dispose of said lots; and whether some of them, to wit, parcels of the lots numbered eight and nine, have not been sold or disposed of, or pretended to be so, for some and on what considerations, by some of the confederates, since the discovery of the fraud above charged, and the commencement of said actions of ejectment therefor, and for what reason or cause was it so disposed of; and, moreover, to state whether they did not apply, or some of them, who and for whom, to the legislature of New Jersey, at its last session, for relief against the decision of the case of Den vs. Lambert, reported in the first volume of Green's Reports, and send to the said legislature a petition signed by said Lippincott, in fact, for his said associates, as well as himself, which was afterwards printed and distributed, and that he produce a copy thereof; and whether they have since ascertained the amount of the proceeds of the sales of timber and wood cut from said estate, and sold as charged in said petition and remonstrance of your orators and oratrixes, and if not, why not; and whether or not all the moneys realized out of said sales were not paid into the hands of said John I. Taylor, and if not all, how much was received by him, and how much by the other confederates, respectively; and whether the map or plan, or copy of the map or plan, annexed is a true copy of all the lines, names, and figures upon the original map or plan drawn or made by said Leonard Walling in June and October, 1829, herein before mentioned and referred to, and if not, to furnish a true and exact copy thereof, and to say whether or not the names of the persons above mentioned as purchasers were not inscribed within the red lines marking the fifteen lots respectively into which the said commissioners divided the real estate for the purpose of sale, together with the quantity of each of said lots, and the price for which each was represented to the court as having been sold; and why the original map or plan was not left at the surrogate's office, or at the office of the court of common pleas, for the county of Monmouth, and why it was retained by said Leonard Walling, and why the lots marked by black lines were made thereon, and what division or allotment of the lots so made for the said sale was intended

by said black lines to and among the persons whose names are written upon the annexed copy, and under what agreement; and especially to say whether said computation of the quantity of land contained in said lots, respectively, was not, in fact, than the said lots did contain; and whether the said Leonard Walling in general preserves his field books of the surveys he makes, and whether he has preserved the field books or notes in any form, of the survey of said real estate, and that the same be produced; and whether the satement of the quantity in the said lots next the shore of the Raritan or Princess bay did include all the land which lays in front of said lots down to low water mark, viz., all the shore; and whether the land which constitutes the shore in front of said estate on Raritan or Princess bay, was not included in the sale, and how much was in fact the price for which said shore was sold or pretended to be sold by said commissioners; and whether said confederates, some, or all of them, did not claim to have said shore, and that part thereof on which the wharves, or one of them, now there being, are or is constructed, as part of the lots, or some of them, laying on said shore, without paying any thing for said shore; and whether said shore or *or* land laying between said shore lots and the low water mark in front of said real estate, being in fact computed and sold by the acre; and if not, why not; and especially to say, why no mention of the shore in front of said lots laying on the shore was made in the deeds of conveyance conveying said lots 5, 6, 7, 8, 9, 10, nor any description thereof, as part of the fee simple estate ordered to be sold by the orphan's court as aforesaid; and why no statement was made to the orphan's court, showing that a sale had been made of said shore; and especially, whether the said Leonard Walling did not, before he was appointed commissioner as aforesaid, or shortly afterwards, consider, and in fact say, to some person, and to whom, that the fishing lot was a good site for a wharf, or words to that effect, and that a wharf ought to be built there or near it, and that a packet should be established, and a town built, and that he was trying to pick up a company to build them; and to say when he said so, and whether it was not, at any time before November, 1829, his wish or expectation, or the wish or expectation of any of the confederates, to acquire the said property for the purpose of establishing a seaport town in competition with Middletown Point; and whether he and his confederates did not think at the time that the commissioners and guardians aforesaid might lawfully be interested in the purchase of said property, directly or indirectly; and that all the confederates may say whether they did not consider and think that the commissioners and guardians aforesaid might lawfully purchase the said lots, or any part of said estate, and if not, why not; and especially, whether said Walling and Taylor, the commissioners aforesaid, did not report that said John I. Taylor was in fact the purchaser; and why they did not report that said commissioners, James Hopping and Leonard Walling, were purchasers; and why they did not report that they and said Joseph Taylor were in fact interested in the purchase of said lots, numbered 5, 6, 7, 8, 9, 10; and especially, that said Lippincott

shall say whether the said James Hopping, Leonard Walling, and Joseph Taylor, were interested in said purchase; and whether he has not so stated, in writing, with his signature, within the last year, and on what occasion; and that the said John I. Taylor may say whether a large quantity of said wood, and how much, was not sold and delivered to the glass works in Jersey City by Joseph Taylor, or some one for him, or some of the confederates; and what sum of money was received therefor; and whether he, said John I. Taylor, did not keep books of account showing the proceeds of the wood and timber cut and sold from said estate of Key Grove, and to produce said books if he have them, and if not, to say what has become of them, and to state their contents in this respect; and, moreover, to state whether portions of said lots were not sold by him for himself and the confederates, some or all of them, and at what prices per acre, and to whom they were sold; and refer to his deeds thereof by the names of the grantees and dates thereof, so that they may be found upon the record thereof in the registry of deeds for said county; and that the said Edward Taylor may say whether he knew or was ignorant of the premises, and especially of the interests of said John I. Taylor in said purchase or pretended sale; and why no satisfactory proof was produced to the judges of the orphan's court, showing that a partition was not practicable without great prejudice to the owners; and why the original map or plan made by said Leonard Walling was kept concealed; and why the proceedings were so irregular as aforesaid; and who prepared or wrote the said reports and orders; and whether the said Leonard Walling did not write them at the request or with the concurring assent of himself and the said James Hopping; and to say whether the commissioners took legal advice as to the conduct of said sale and the preparation of any of said reports and orders, and whose advice was so taken; and upon whose advice the said plan or map was withheld; and whether any other person was interested in said lots, numbered 5, 6, 7, 8, 9, 10, at the time of the execution of the said deed to said John I. Taylor, and why said deed was not made out and executed to said other persons as well as to said John I. Taylor; and that all the confederates may say whether any other deeds or papers, agreements or covenants, were executed between said confederates respecting said lots than those herein above mentioned, and if they were, to produce them, so that the court can see how and in what manner, and when, said company was formed, and its several members became interested, or agreed to become interested, in the purchase of said lots, and upon what consideration, and to what extent, respectively; and especially that they respectively say whether the understanding among the confederates, any or all of them, that they should take an interest in the purchase of said estate with a view to the formation of a seaport town thereon, was expressed in writing or merely verbal, and when the plan of the town was adopted and agreed upon, and whether the allotment of said estate into fifteen lots was not made with reference to some plan of a town, and to such a plan as was afterwards adopted and car-

ried into effect, and by whom said plan of said town was drawn, and by whom the allotments marked on said Walling's map annexed, in which are inscribed the names of said James Hopping, Joseph Taylor, and Leonard Walling, were made, and how, and upon what consideration, and by what deed or deeds, and how long before the execution of such deeds, if any, such allotments were made, and whether any, and what memorandum thereof was made, and to produce the same; and especially to say whether all the persons who were selected as purchasers, or appear as purchasers, were as nearly connected by relationship or marriage as above is stated, and why so few strangers became purchasers; and whether the favor of cutting and selling the wood from the said estate to raise the purchase money was published co-extensively with the advertisement of sale, and if not, why not; but, if it was, to state specially when, where, and how this favor was made public, and why no security for the second instalment was required though the deeds were to be given, and the time of payment was a year afterwards, if the purchasers would agree to pay interest; was it or not to enable the purchasers, among other things, to sell out their interest in said estate to some advantage, and what, and how? And especially to say if these beneficial terms and conditions of sale were in fact made as generally known as the offer of sale itself.

And that the said confederates may, in their answer, say upon which of the said pretences, and upon what grounds especially, and on what reasons, they respectively deny the right of your orators and oratrixes to a statement, as evidence as aforesaid, of all moneys received by them, being proceeds of sales of any timber or wood, so as aforesaid cut and sold from said real estate, and of the quantity of timber consumed or used upon the premises or elsewhere, and not sold.

And that they, said confederates, each and every of them, their agents, servants, and attorneys, respectively, may be restrained and enjoined from committing all further waste on any part of said lots numbered 5, 6, 7, 8, 9, 10, and of any other of said lots of said real estate, in possession or under the control of said confederates, or any of them as associates in the premises, and that they may be enjoined not to sell nor dispose of any of them, or any parcel of any lot of said real estate in their said confederates' possession or control, or in the possession or control of either of them, respectively, until the further order of this honorable court.

And that said deed to John I. Taylor may be decreed to be null and void as a deed of conveyance to said Taylor, but be retained as a deed of covenants, and be kept on the files of this court for the use and benefit of all the grantees of said John I. Taylor, their heirs and assigns, executors and administrators, or legal representatives howsoever, without prejudice to their respective rights of action thereon in any manner howsoever; and that the sale of said lots numbered 5, 6, 7, 8, 9, 10, by said commissioners, may be set aside, and be decreed to be null and void.

And that your orators and oratrixes may have such further relief, or

other relief in the premises as the nature of their case shall require, and your honors or this honorable court shall deem agreeable to equity.

May it please your honors to grant to your orators and oratrixes, the premises being considered, the writ of injunction of the United States of America, to be issued out of this honorable court in due and usual form, addressed to the said confederates, viz., John I. Taylor, son of the late Joseph Taylor, Edward Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Daniel Holmes; and also to Teresa Walling, Catharine Walling, Adelina Walling, and Washington Walling, children and heirs of said Leonard Walling; also to Sarah Holmes and Samuel Holmes, her husband, and Catharine Holmes, the said Sarah and Catharine being sisters and heirs-at-law of said late John W. Holmes; and also to Edward Hopping and John Hopping, sons of the said late James Hopping; and Sarah Leonard and her husband, Thomas Leonard, and Mary Frost and her husband, James Frost, the said Sarah and Mary being daughters of the said late James Hopping, and the said sons and daughters being his heirs-at-law; and also to Samuel Taylor, son of said late Joseph Taylor, and Hannah, his daughter, and wife of said Ezra Osborn, and Mary, daughter of said Joseph Taylor, and her husband, Richard C. Burrowes, and Elizabeth, daughter of said Joseph Taylor, and her husband, John Michaux, and Martha, daughter of said Joseph Taylor, and her husband, Thomas Fields, and Sarah Taylor and Huldah Taylor, daughters of said Joseph, both unmarried, and Sarah and Gilbert Van Mater, her husband, the said sons and daughters of said Joseph Taylor, being his heirs-at-law; all of said confederates being of the county of Monmouth, and State of New Jersey, and citizens of said State of New Jersey, commanding and enjoining them, and each of them, not to commit any strip or waste, or damage whatever, upon the lands or real estate described herein as lots numbered 5, 6, 7, 8, 9, 10, upon the plan of the late Edmund Kearny's estate in said Monmouth county, made by said Leonard Walling, and referred to in the report of commissioners appointed by the orphan's court of Monmouth county to sell said lands; nor to sell or dispose of the same, or any part thereof which may be in their possession, jointly or severally, or in any manner under their control, or in the possession of any of their agents, servants, or attorneys whomsoever, until the further order of this honorable court; and also the writ of subpœna of the United States of America, to be issued out of this honorable court, in due and usual form, addressed to the said John I. Taylor, son of Joseph Taylor, deceased, Edward Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Daniel Holmes; and to Teresa Walling, Catharine Walling, Adeline Walling, Washington Walling, children of the late Leonard Walling, deceased; and to Sarah Holmes and Samuel Holmes, her husband, and Catharine Holmes, the said Sarah and Catharine being sisters and heirs-at-law of the late John W. Holmes, deceased; and to Edward Hopping and John Hopping, sons of the late James Hopping, deceased; and to Sarah Leonard and her husband, Thomas Leonard, and Mary Frost and her husband, James Frost, the said Sarah and

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Mary being daughters of said James Hopping; and to Samuel Taylor, son of the late Joseph Taylor, deceased; and also to Hannah Osborn, daughter of said late Joseph Taylor, and wife of said Ezra Osborn, and Mary Burrowes, daughter of said late Joseph Taylor, and her husband, Richard C. Burrowes, and Elizabeth Michaux, daughter of said late Joseph Taylor, and her husband, John Michaux, and Martha, daughter of said Joseph, and her husband, Thomas Fields, and Sarah Taylor and Huldah Taylor, daughters of said late Joseph Taylor, and both unmarried, and Sarah, daughter of said Joseph, and her husband, Gilbert Van Mater, all of the county of Monmouth, in the State of New Jersey, within the district of New Jersey aforesaid, commanding them, and each of them, by a certain day therein to be mentioned, and under a certain penalty therein to be inserted, to be and appear before the judges of the honorable court in equity, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators and oratrixes shall ever pray, &c.

JAMES S. GREEN,
Solicitor for and of counsel with complainants,
GEORGE SULLIVAN,
Of counsel with complainants.

NEW JERSEY, *ss.*—Anne E. Kearny, one of the complainants in the foregoing bill of complaint annexed, being duly sworn, on her oath says, that she is acquainted with the contents of the said bill, and that the facts, matters, and things therein set forth, so far as they are stated, as of her own knowledge and relate to her own acts and deeds, are just and true; and so far as they are stated upon the information of, and to relate to, the acts and deeds of others, she believes them to be true.

ANNE E. KEARNY.

Sworn to and subscribed before me this 15th day of October, anno Domini 1841, at Burlington.

ROBT. D. SPENCER,
Master and examiner in the circuit court of the United States for the district of New Jersey.

Circuit court of the United States for the district of New Jersey, in equity.

Between THOMAS KEARNY et al., complainants,
and
JOHN I. TAYLOR et al., defendants.

The complainants in this cause make the following amendments to their bill of complaint, to wit:

First. At folio 196, after the words Ezra Osborn, insert the words "David S. Bray."

Second. At folio 215, after the name of Ezra Osborn, insert the name of "David S. Bray."

Third. At folio 288, after the name of Ezra Osborn, insert the name of "David S. Bray."

JAMES S. GREEN, *solicitor for, and*
GEORGE SULLIVAN, *of counsel with,*
the complainants.

Circuit court of the United States, third circuit for the district of New Jersey, in equity.

Between THOMAS KEARNY et al.
and
JOHN I. TAYLOR et al.

Amendments under the order of court making Oliver Vanderbilt a party to the bill of complaint.

First. At folio 194, after the words "other like purpose," insert "And your orators and oratrixes further show unto your honors, that the said Oliver Vanderbilt had due notice of the frauds herein stated and charged, before he became a purchaser of any part of the premises or received conveyance thereof, as your orators and oratrixes are informed, advised, and believe. But your orators and oratrixes do not charge said Oliver Vanderbilt as a party to said frauds, except as he was and is a purchaser with notice of said frauds, and combines with the other confederates as hereinafter is charged. And your orators and oratrixes further show, that all the deeds of conveyance herein mentioned, and the powers of attorney herein mentioned, were duly recorded and registered at and before the time of the purchase by said Vanderbilt of any lands in said lots numbered 5 to 10, and also certain other deeds, viz., the deed of John I. Taylor to Leonard Walling and James Hopping, commissioner as aforesaid, Joseph Taylor, guardian as aforesaid, and Ezra Osborn, David S. Bray, Richard C. Burrowes, and Isaac K. Lippincott, bearing date the twenty-eighth day of April, eighteen hundred and thirty, whereby said grantor conveys to said grantees seven-eighths of said lots numbered 5 to 10, which had been conveyed to him by said commissioners in and by their deed to him of first of April, eighteen hundred and thirty; that said John I. Taylor, in his said deed of twenty-eighth of April, eighteen hundred and thirty, reserves certain twenty-four lots, describing the same by reference to a certain plan made by said Leonard Walling on the 9th of said April; that said lots were reserved for the benefit of said grantor, John I. Taylor, and his said grantees, and were distributed among them, as appears by said plan in the handwriting of said Leonard Walling, upon some nominal considerations, or else upon biddings for choice of lots among themselves, and that said John I. Taylor executed deeds of said lots accordingly to the said commissioners and guardian, and their and his said associates, and said deeds from him to them were also on record at the time said Vanderbilt purchased the lots conveyed to him, which lots were parcel of the aforesaid twenty-four lots."

"And your orators and oratrixes further show that the deed under which said Oliver Vanderbilt claims was executed by said commissioner, Leonard Walling, and by the representatives and heirs of the commissioner, James Hopping, and by the representatives and heirs of Joseph Taylor, and by said associates John I. Taylor, Ezra Osborn, David S. Bray, and Isaac K. Lippincott, which deed was dated twenty-fifth of February, eighteen hundred and thirty-nine. And your orators and oratrixes state, that said Vanderbilt could not, by reason of the premises; have derived the title of his said grantors from the commissioners of the orphan's court without coming to the knowledge of the premises, and through them must have come to the knowledge of all the frauds herein stated, and that said Vanderbilt has not paid for his said purchase."

Second. At folio 199, after the word "New Jersey," insert "and with the said Oliver Vanderbilt, whom these complainants do not charge as a party to the frauds herein stated and charged, but as a purchaser, with notice thereof as aforesaid, he, the said Vanderbilt, combining with said confederates as such purchaser with notice, in order to hold out your orators and oratrixes from the said premises, viz., the lots numbered 5 to 10, as aforesaid. And the said Vanderbilt is charged as the representative of the other ter-tenants of said lots claiming to hold under said John I. Taylor."

Third. At folio 248, after the words "herein above stated and alleged," insert "and sometimes the said Vanderbilt pretends that he had no knowledge, information, or notice whatever, of any of the frauds herein stated and charged; whereas your orators and oratrixes charge to the contrary hereof, and especially that all the proceedings of the orphan's court, herein set forth, and all the deeds herein before mentioned, were duly recorded in the surrogate's office and in the clerk's office respectively, where such proceedings and deeds were required by law to be recorded and registered, and where each and all them accessible by said Vanderbilt, his attorney and counsel, at his and their pleasure, in the town of Freehold and county of Monmouth.

"And your orators and oratrixes do charge that, upon perusal of the deed of the commissioners to John I. Taylor aforesaid, dated the first day of April, eighteen hundred and thirty, it would have appeared to said Vanderbilt, his attorney and counsel, that said deed was void within the rule of the case of Den *vs.* Lambert aforesaid, and that it was grossly inconsistent with said commissioners' report of their sale, to the orphan's court aforesaid; and by perusal of the deeds of said John I. Taylor to said Leonard Walling and the rest, bearing date the twenty-eighth day of April, eighteen hundred and thirty, and by examination of the said plan of twenty-four lots mentioned therein as reserved as aforesaid, of which the lands purchased by said Vanderbilt was parcel, it would have been apparent to said Vanderbilt, his attorney and counsel, that said deed of the said commissioners to said John I. Taylor was made by them for the benefit of said Leonard Walling and James Hopping, two of the commissioners, and of Joseph Taylor,

the guardian, jointly with others their associates. And these complainants further charge that, by reason of the premises, the said Vanderbilt, and all purchasers of any parcels out of said lots numbered 5 to 10, as aforesaid, must needs be and were affected with notice of all the frauds herein set forth, as if he and they had actual notice thereof, in fact, previous to his and their purchases of any parcel out of said lots so numbered 5 to 10, as aforesaid, as the representative of said purchasers."

Fourth. At folio 250, after the word "interrogated," insert "except as to the said Oliver Vanderbilt, and the complainants hereby waive the necessity of his answering to any other matters than such as pertain to his knowlege, information, or notice, actual or constructive, of the frauds herein stated and charged, previous to his purchase of any parcel of said lots, numbered 5 to 10, aforesaid. First. Whether he ever referred to the records of the proceedings of the orphan's court aforesaid, in the Surrogate's office, and when; or if not, whether any other person did so on his behalf, or to satisfy him of the title of the vendors to the land aforesaid he was about to purchase, or whether he accepted the deed of conveyance thereof without any knowledge of the vendors' title whatever, or inquiry, or investigation, or search; and if not, to state what facts and circumstances, and all he did know or was informed of, or had any notice of, in any way tending to show that the title of his vendors was or was not clear of all doubt, and particularly whether he, his attorney or counsel, had any knowledge of the deed of John I. Taylor to the commissioners and guardian and their associates, dated the twenty-eighth of April, eighteen hundred and thirty, and of the plan of the twenty-four lots therein mentioned as made on the ninth of said April? And whether he or any other person in his behalf saw said plan, or a copy of it, previous to his said purchase, and in whose hands and possession?"

"Second. Why neither he, nor any attorney or counsel in his behalf, did not, if so were the fact, examine the registry of deeds nor the records of the orphan's court; and did not he and his counsel or attorney know, or were they not informed, that the title of the vendors of said Vanderbilt was under an order of sale of the orphan's court of the county of Monmouth, and if not, what notice had he, or his attorney or counsel, in respect to the vendors' title? Had he or they any, and if any what, precisely, was the information he and they had, and to state the same precisely, fully, and exactly as may be?"

"Third. When the said Vanderbilt first heard of any doubts, questions, or rumors of any sort against the title of purchasers under the auction sale and the order of the orphan's court aforesaid, and what he heard, from whom, and when, and where, and state all he heard in respect to any defect in the title of such purchasers or of his vendors."

"Fourth. What pieces or parcels of land included in said lots numbered 5, 6, 7, 8, 9, 10, aforesaid, or either of them, have ever been conveyed or described in conveyances to said Vanderbilt, and how much of them and each of them were held by him at the time of the

commencement of action of ejectment aforesaid against him, and by whom have they since been held and are now held and claimed, by title under him, said Vanderbilt?"

Fifth. Whether he, said Vanderbilt, ever claimed to have right to any part, and what, of the shore in front of said lots 8 and 9, under said John I. Taylor, and under what conveyances from or by him, and what and how much he has paid for his said purchase?"

Fifth. At folio 291, after the word "New Jersey," insert "to Oliver Vanderbilt of the city and State of New York, and a citizen of said State, and there residing."

Sixth. At folio 250, after the words "herein above alleged and charged," insert "excepting as to said Oliver Vanderbilt's purchase with notice, these complainants waive hereby the necessity of the rest of the defendants putting in an answer as to the facts and circumstances which show or tend to show that he did or not purchase with notice of the frauds stated and charged in said bill of complaint."

ANNE E. KEARNY,
JAMES S. GREEN,
Solicitor for somplainants.
GEORGE SULLIVAN,
Of counsel.

UNITED STATES OF AMERICA,
Third circuit, eastern district of Pennsylvania, ss.

On the 19th day of December, A. D. 1842, before me personally appeared the above named Anne E. Kearny, and made oath that she has read the amendments above subscribed by her, and understands them in connexion with the bill to which they are appended, and knows the contents of said bill and amendments, or said amended bill; that the same are true of her own knowledge, except so much thereof as is stated upon information and belief; and as to all this, she believes the said amendments and the bill, or the said amended bill, are true.

Sworn and subscribed this 19th December, 1842, in open district court, U. S., for E. D. of Pennsylvania.

FRANCIS HOPKINSON,
Clerk of district court.

UNITED STATES OF AMERICA,
Third circuit, district of New Jersey, ss.

On this twenty-fourth day of December, A. D. 1842, personally appeared before me George Sullivan, of Jersey city, and being duly sworn, testifies that he has perused the amendments above made and set forth, and the original bill in the cause; that he knows the contents thereof, and upon the information of others believes the same to be true; that he has inspected the records in the registry of deeds, and in the surrogate's office for the county of Monmouth, and what is set forth

in the bill and amendments as appearing in said records he knows to be true. GEORGE SULLIVAN.

Subscribed and sworn to before me, this 24th day of December, 1842.
SAM. CASSIDY,
Comm'r of said court.

Circuit court of the United States of America, for the district of New Jersey.

JOHN I. TAYLOR and others, defendants,
and
THOS. KEARNY and others, complainants.

The joint and several answers of John I. Taylor, Ezra Osborn, John Hopping, Theresa Walling, and Edward Hopping, to the amended bill of complaint of Thomas Kearny, Anne E. Kearny, Catharine Kearny, George C. Thomas and Anastasia, his wife, and Horatio N. Kearny, complainants, against them, the said John I. Taylor, Ezra Osborn, John Hopping, Theresa Walling, and Edward Hopping, Edward Taylor, Hannah Osborn, Daniel Holmes, Richard C. Burrowes and Mary, his wife; Catharine Walling, Adaline Walling, Washington Walling, Sarah Holmes and Samuel Holmes, her husband; Catharine Holmes, Sarah Leonard and Thomas Leonard, her husband; Mary Frost and James Frost, her husband; Samuel Taylor, Elizabeth Michean and John Michean, her husband; Martha Fields and Thomas Fields, her husband; Sarah Van Mater and Gilbert Van Mater, her husband; Sarah Taylor, and Huldah Taylor, and Oliver Vanderbilt.

These defendants, now and at all times, saving and reserving unto themselves respectively all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, untruths, deficiencies, and other imperfections in the said bill of complaint contained, for a full and perfect answer thereunto, or to such parts and so much thereof as they are severally advised it is material or at all necessary for them to answer, answering jointly and severally, admit that the said Edmund Kearny died intestate on the 30th December, 1822, leaving his children and heirs at law, as in said bill is named, seized of said Key Grove property, which consisted not of 960 acres, as in said bill is erroneously stated, but of 781 acres, and which is currently laid down on said map of Leonard Walling; about 350 acres of which was wood land, some part of which 350 acres was covered with a small growth of prime wood, and some of it with a tolerably heavy growth of oak and pine and bilstead wood, and about 431 acres of it was cleared land, which cleared land was for the most part of a light barren sandy soil, and worth but little for agricultural purposes; and which cleared and wood land are indicated by a dotted line on the map hereto annexed, marked A. And these defendants in further answering admit, that the said James P. Kearny came of age at the time, and mortgaged his interest in said estate, as in said bill is

named, and conveyed his interest to said John W. and Daniel Holmes at the time mentioned in said bill for the consideration of $1600, not subjected to said mortgage of W. W. Forman [as] in said bill is stated, but, as these defendants are informed and believe, free and clear of said mortgage.

And these defendants, the said John I. Taylor, John Hopping, and Ezra Osborn, severally absolutely deny, and the said Theresa Walling and Edward Hopping, to the best of their knowledge, information, and belief, deny, that the houses, docks, buildings, and improvements, which have since the sale of said property, under the orders of the orphan's court in said bill named, *have* been put upon lots 5, 6, 7, 8, 9, and 10, or any part of said buildings or improvements have been or could have been built with the capital realized, or which could have been realized, from the sales or any management of the wood and timber growing thereon. And these defendants further say, that whatever might have been the advantages of the position of said property, was matter of public notoriety, and well known to the bidders who attended said sale, and had its just effect in enhancing the price which it brought at said sale. And these defendants in further answering say, that according to their respective best knowledge and belief, and they so expressly charge the truth to be, that the said commissioners, and the said Daniel Holmes and Joseph Taylor, and each and every of them, at and before the said sale, did all that just and honorable men could do to spread the knowledge of said sale among the public, and to make the public aware of, and to appreciate, whatever advantages was possessed by said property, and to get the highest possible price for each and every parcel thereof.

And these defendants in further answering admit, that D. Holmes applied by petition as in said bill is named, but they severally to the best of their knowledge, information, and belief, deny that the said Daniel and John W. Holmes became owners with the view and purpose of having it sold, so that it might be laid out and improved as a seaport town.

And these defendants in further answering admit, that after said application, but without any unlawful or improper co-operation of others, such proceedings were had, that on the 3d and 4th of November, 1829, said property was offered for sale, and was in fact sold, under an order of said orphan's court. But these defendants, Ezra Osborn, John I. Taylor, and John Hopping, respectively for themselves deny, and the said Theresa Walling and Edward Hopping, to the best of their respective knowledge, information, and belief, respectively deny, that immediately after said sale wood and timber were cut from said estate, and sold by the purchasers to an extent in value exceeding the purchase money, or to any extent whatever.

And these defendants in further answering admit, that at the time of said application for partition said John Kearny had died intestate and without issue, and that said Thomas, Anne E., and Catharine Kearny, were minors, and Joseph Taylor was their guardian, and that

Mary E. Kearny was a minor, and John O. Stilwell was her guardian, and that the said Mary died on or about the 25th December, 1836, but whether intestate or not these defendants are ignorant, as also where she made her residence at her death, as also what debts she owed, and what personal property entitled to.

And these defendants in further answering admit, that the proceedings had upon said application for partition are correctly copied in said bill from folio twenty-two to folio fifty-five; but, for greater certainty, refer to the record itself.

And these defendants in further answering the said John I. Taylor, Ezra Osborn, and John Hopping, for themselves absolutely deny, and the said Theresa Walling and Edward Hopping, to the best of their respective knowledge, information, and belief, respectively deny, that immediately after the said order of said orphan's court directing the deeds to be executed, the said commissioners, or either or any of them, with the assent of the said Joseph Taylor, or otherwise, permitted the said Ezra Osborn, Isaac K. Lippincott, John I. Taylor, Daniel Holmes, David S. Bray, John Hopping, James Hopping, and Leonard Walling, to enter upon lots 5, 6, 7, 8, 9, and 10, on the said map of said estate of the said Leonard Walling, and then and there to cut down, carry away, and sell the timber and wood there being. And they further deny that, immediately after said order to execute deeds, the said David S. Bray, John Hopping, James Hopping, Leonard Walling, John I. Taylor, Joseph Taylor, Ezra Osborn, and Isaac K. Lippincott, or any or either of them, to the best knowledge or belief of the defendants, did enter under and by permission of said commissioners and guardians aforesaid, upon said lots, 5, 6, 7, 8, 9, and 10, and act as owners thereof, and thereafterwards continually did then and there exercise acts of ownership upon the same, under permission of said commissioners and guardians; and for all the rest, or for themselves or himself, did then and there cut down and carry away a large quantity, or any quantity, of wood and timber, and sell the same for $30,000, or any other sum. And these defendants, the said John I. Taylor, Ezra Osborn, and John Hopping, for themselves, absolutely say, and the said Theresa Walling and Edward Hopping, to the best of their knowledge and belief, say, that no part of the purchase money for said lots 5, 6, 7, 8, 9, and 10, or of any of the other lots, was raised by the sales of wood or timber, or of town lots off of said Key Grove property, but that the whole of the purchase money of said lots 5, 6, 7, 8, 9, and 10, was raised from other sources.

And these defendants in further answering admit, that the said commissioners, on or about the 1st of April, 1830, executed the deed referred to in the bill of complaint to the said John I. Taylor, but, for its contents and construction refer, for greater certainty, to the deed itself.

And this defendant, the said John I. Taylor, in further answering for himself, says that it is his impression and belief that he was present at said sale on the 3d of November, 1829, but did not bid for, and did

not want to purchase, any part of said property. And that he did not attend at all on the second day of sale, to wit, the 4th November, 1829. And so far as he, the said John I. Taylor, was concerned, he denies absolutely that at or previous to said sale he had combined with anybody to bring about said sale for any purpose whatever, nor does he know or believe that any such combination was entered into by any person or persons whatever, nor did he then know that any company had been, or would be, formed for the purpose of bidding for or purchasing any part of said Key Grove property. And this defendant, the said John I. Taylor, for himself, in further answering, says, that he did not then know or believe, nor does he now know or believe, that either of the said commissioners, or the said guardian, were, at the time of said sale, in any way interested in the purchase of any part of said property, or that there was any understanding, at or before said sale, between the said commissioners, or any or either of them, or the said guardian, with Daniel Holmes, or with any other person or persons whatever, that the said commissioners or guardian, or any or either of them were, or should be, interested in said purchase, in any way whatever.

And the said John I. Taylor, for himself, further saith, that some time after said sale, and before the deed to him from said commissioners was executed, but the precise time when this defendant cannot now remember, he bought of Ezra Osborn the share of Richard C. Burrowes by a verbal agreement, the said Osborn having, as this defendant understood, bought out the said Burrowes, and he, the said J. I. Taylor, paid said Burrowes $40 for it, as an advance thereon. And the said John I. Taylor further says, that he has no recollection of any thing else relating to the purchase of said Key Grove property, until, as he thinks, the meeting of the surveyors to lay out roads, in February, 1830, when it was proposed by some one interested, that the deed for lots 5, 6, 7, 8, 9, and 10, should be made to the said J. I. Taylor, as he was then young and unmarried, for the convenience of transfers and to save expense. And this defendant, in further answering says, that he does not know of his own knowledge how the said Ezra Osborn, David S. Bray, John Primrose, and James Hopping, Isaac K. Lippincott, Leonard Walling, came to [be] interested in the property, but believes, and has always so heard and been informed, that on the second day of the sale, viz., the fourth November, 1829, Daniel Holmes, who was anxious, and whose interest it was, to make the property bring as much as possible, prevailed upon several gentlemen to join for the purpose of bidding for lot No. 8, aforesaid, and that John Hopping, Ezra Osborn, Richard C. Burrowes, Isaac K. Lippincott, Horatio N. Kearny, Septimus Stephens, and Primrose Hopping, joined for that purpose; and this defendant believes, and so charges the truth to be, that the only object of said Holmes in getting up said company was to increase the price of the property by creating competition; and that, but for the said company, the lot No. 8 would have been struck off to persons interested against improvement in

that neighborhood, for about twenty-nine dollars per acre. And this defendant, the said John I. Taylor, in further answering says, that said lot number 8 was a poor, barren, sandy soil, with wood of but very little value upon it, scarcely of value enough to pay for its own cutting, and worth but litttle for agricultural purposes; and that, in the opinion of this defendant, no other plan could have been hit upon which would have made the said lots 5, 6, 7, 8, 9, and 10, bring as much as they did bring. And the said John Hopping, in further answering for himself says, that so far as he is himself concerned, he did not combine with any person whatever to bring about a sale of the Key Grove property, nor does he know or believe that any body else did; that this defendant did not attend the said sale on either day of the sale, and previous to the said sale he did not know and had not heard that any company had been or would be formed for the purchase or sale of said Key Grove property; nor had he any idea or belief that the said Key Grove property could be converted into a seaport town. And the said John Hopping further says, that in the evening of the first day's sale, after the adjournment, or the morning of the next day, and before the sale commenced, in a conversation between this defendant and his brother, James Hopping, the said James Hopping told him that Daniel Holmes and Septimus Stevens talked of making up a company to buy the fishing point lot, viz., No. 8. This defendant then asked said James Hopping if he was going to take a share, to which the said James replied that he could not, as he was a commissioner; said James then said he expected that this defendant could have a share if he wished. This defendant then told him to tell Daniel Holmes that he would take a share; and this defendant, the said John Hopping, expects that his brother did so report him. And the said John Hopping, for himself, says, that the said James Hopping had no interest in said purchase of lots No. 5, 6, 7, 8, 9, and 10, at the time of said sale, nor until about three months after, when he consented to come in and advance a part of the purchase money at the instance and request of this defendant and his brother Primrose. And this defendant in further answering for himself says, that neither the said commissioners, nor the said guardian, nor any or either of them, to the best knowledge or belief of this defendant, were interested directly or indirectly in said purchase at the time thereof, nor had he ever heard, until after the reading of the bill in this cause, that there had been any combination, unlawful or otherwise, to bring about a sale of said Key Port property. And these defendants in further answering say, that the said sale was in every respect fair, as far as these defendants know, and as they verily believe, and that they never heard of any allegation to the contrary, until about the time of the commencement of the suits in ejectment referred to in the bill of complaint; and this defendant, the said Ezra Osborn, answering for himself, absolutely denies that previous to said sale he combined with any person whatever to procure a sale of said property, nor did he ever know, hear, or believe, that such combination had been entered into by any person or persons whatever, nor

did he know or believe at the time of said sale, nor does he now know or believe, that the said commissioners and guardian, or either or any of them, were at the time of said sale interested directly or indirectly in said purchase. And this defendant, Ezra Osborn, in further answering says, that his object in attending said sale was to bid for lot No. 1, and that he did bid for it until it got up in the opinion of this defendant to its full value, when this defendant stopped bidding, and Isaac Lippincott bidding higher, it was struck off to the said Lippincott just before dinner on the second day of sale. And this defendant in further answering says, that according to his best memory and belief said lot No. 1 was adjourned on the first day of sale at $23 per acre on this defendant's bid, and that he became acquainted with said Lippincott for the first time at said sale.

And the said Ezra Osborn in further answering says, that the first intimation he had of any company to be formed for the purchase of any part of said property, was on the first day of sale, after the adjournment, when just as this defendant and Richard C. Burrowes had mounted their horses to go home, Daniel Holmes said to said Burrowes, come up to-morrow and let us buy Fishing Point. But whether Burrowes made any answer or not, this defendant does not recollect.

And this defendant in further answering says, that he had no idea or desire to purchase any part of said lots 5, 6, 7, 8, 9, or 10, until after said lot No. 1 was struck off to I. K. Lippincott as aforesaid, and then at the request of said Richard C. Burrowes he consented to be concerned in the purchase of lot No. 8.

And this defendant in further answering says, that he has always understood, and he believed, that Daniel Holmes prevailed upon Burrowes to join in said purchase; that the persons interested at the time said lot was struck off were said Holmes, Osborn, Lippincott, Stephens, Horatio N. Kearny, John and Primrose Hopping, and Burrowes; that at the time said lot No. 8 was struck off, he did not know who precisely were considered as interested, but while the bid was crying consented to join, merely at the request of Burrowes, who was his brother-in-law, and that the said lot was so circumstanced that, inasmuch as the lot on the first day had got up as high as it was worth, so far as individuals were concerned, that the more joined said company the higher it would be run up to; that so far as this defendant understood and believed the object of D. Holmes in getting up said company was, by dividing the risk and expense which necessarily would result from improving said lot so as to make it worth the purchase money, was to get bids against a company of gentlemen who were bidding for lot No. 8, and whose interests were against any improvements at that point, and thus increase the price of the property; and according to the best of this defendant's judgment and belief, such was its effect.

And this defendant in further answering says, that after lot No. 8 was struck off to Burrowes as aforesaid, the other lots 5, 6, 7, 9, and 10, were bid off one after the other, under a like understanding with each lot as it was put up, but so far as this defendant was concerned,

and as he believes so far as the others were concerned, although the said Holmes, for the purpose of creating competition against those who bid for lot No. 8 on the first day of sale, had been trying to get up a company for the purpose, and had solicited several to join for that purpose, yet that the same was not effected until after lot No. 1 was struck off as aforesaid, and then only loosely and partially, as was likely to happen under such circumstances. And this defendant further says, that he did not want said lots 5, 6, 7, 8, 9, and 10, on his individual account, and should not have bid for the same. And this defendant in further answering says, that at the time of said sale he did not know that either the said James Hopping, Leonard Walling, or Joseph Taylor, were interested or to be interested in said purchase, nor were the said lots, 5, 6, and 10, struck off to this defendant with any such understanding, nor were they in point of fact interested in said purchase in any of the said lots 5, 6, 7, 8, 9, and 10, either directly or indirectly, to the best of this defendant's knowledge and belief. And this defendant in further answering says, that said property was sold fairly and without fraud, and for the highest price bid for the same.

And these defendants in further answering say, that about the 1st of April, 1830, the said commissioners, acting under the orders of said court directing deeds to be made to the purchasers, made and executed the deed mentioned in the bill of complaint to the said John I. Taylor, under a belief that, although Burrowes, Lippincott, and Osborn, were in reality the purchasers of lots 5, 6, 7, 8, 9, and 10, and were so reported to the court, yet that as it in fact made no difference to any person whether the deeds were made to them or their grantees, or whoever they might direct it to be made to, that a deed made to John I. Taylor at their request, and with the consent of said purchasers, would be as good and legal as if made to the persons reported as purchasers. And these defendants admit that it is recited in said deed, as in said bill is set forth, from folio 67 to 79, but for greater certainty refer to the deed itself.

And the said John Hopping answering for himself, absolutely denies that either the said James Hopping or Leonard Walling were interested in the purchase of lots 5, 6, 7, 8, 9, or 10, or any or either of them, at the time of said sale, on the 3d and 4th of November, 1829. And this defendant in further answering says, that the said Leonard Walling and James Hopping did not become, or agree to become, interested in said lots 5, 6, 7, 8, 9, and 10, until about three months after said 4th November, 1829. And this defendant, the said John Hopping, in further answering says, that at the meeting of the surveyors to lay out a road upon said property, about the 28th February, 1830, he solicited and urged the said Leonard Walling to come in and take a share of said lots, 5, 6, 7, 8, 9, and 10, in the place of Septimus Stephens, who had backed out voluntarily, and that said Walling for a long time refused, but was finally prevailed upon by this defendant to come in and take a share, and that it was then, and not till then, that said Walling first became, or agreed to become, interested and to take a share of said lots. And the said John Hopping further states, that the

said James Hopping had no interest in said lots until a short time before the deed from the commissioners to John I. Taylor was executed, and about three months after the sale on the 4th of November, when this defendant and his brother Primrose, finding that the improvements then contemplated upon said lots 5, 6, 7, 8, 9, and 10, would involve them in much expense, they solicited and urged their brother, the said James Hopping, to come in and take a share with them, and to assist them with his capital, and that it was then, and not till then, and upon the repeated solicitation of this defendant and his brother Primrose, that said James, about three months after said 4th November, 1829, agreed to come in and take an interest with them, and assist his said brothers, and that the said James agreed to and did, at said request of this defendant and his brother Primrose, take three-eighths of one quarter, this defendant three-eighths of one quarter, and Primrose two-eighths of one quarter.

And these defendants in further answering admit, that the said John I. Taylor was not the purchaser of said lots 5, 6, 7, 8, 9, and 10, and they further say, that the said John I. Taylor was not the purchaser of said lots 5, 6, 7, 8, 9, and 10, at all, but that the said Burrowes was the purchaser of lot No. 8, said Lippincott the purchaser of lots 7 and 9, and said Osborn of lots 5, 6, and 10, with an understanding between said Burrowes, Osborn, and Lippincott, that D. Holmes, Septimus Stephens, Horatio N. Kearny, John Hopping, and Primrose Hopping, should be interested with them. And these defendants further say, that said Lippincott, Osborn, and Burrowes, were each of them men of property and respectability, and amply able to pay for all the property struck off to them as aforesaid; and they submit that, as between them and the commissioners, the said Lippincott, Osborn, and Burrowes, were the only purchasers and only persons who were responsible to the commissioners for the purchase money. And these defendants in further answering, the said Osborn, John Hopping, absolutely, and the said John I. Taylor, Theresa Walling, and Edward Hopping, to the best of their knowledge, say that after said sale, said Leonard Walling was induced to come in in the place of Septimus Stephens, and said James Hopping at the request of his brothers John and Primrose. And these defendants further say, that after said sale, Horatio N. Kearny sold out his said interest for $40 advance to said David S. Bray, Daniel Holmes to said Joseph Taylor, for $40 advance, Richard C. Burrowes to said Ezra Osborn, who sold said Burrowes' interest to said John I. Taylor, and that the deed from the said commissioner to John I. Taylor was so executed to him at the request and with the consent of said Burrowes, Lippincott, and Osborn, and because it was so requested to be done by said Lippincott, Osborn, and Burrowes, and wished so to be done by all persons then interested in said property, and because the said John I. Taylor was unmarried, and for convenience in making deeds and to save expense.

And these defendants submit, that if said deeds had been executed by said commissioners to said Burrowes, Osborn, and Lippincott, re-

spectively, that the said deeds could not have been impeached even if said commissioners had become interested therein after the sale, and that a deed under such circumstances, either to the commissioners directly, or to any person in trust for them, would give them a legal title; and that in contemplation of law the deed to the said John I. Taylor from the said commissioners was for the use and benefit of the said Lippincott, Osborn, and Burrowes, solely.

And these defendants in further answering say, that the said sale by the said commissioners, was made fairly and without fraud, and for a full consideration, and that the whole of the purchase money was received by the said commissioners and paid by them to the persons entitled to the same, and that the deeds from the said commissioners to the said John I. Taylor, was made and executed in good faith and for a sufficient consideration, and with the consent of the persons respectively reported to the court as purchasers.

And these defendants in further answering deny, that said deed to John I. Taylor from the said commissioners is void, because the same was made fraudulently by the said commissioners, or with any unlawful combination or confederacy between the said commissioners and any other person or persons whatever; and they submit that it is good and effectual in law.

And these defendants, Ezra Osborn, John Hopping, and John I. Taylor, for themselves absolutely deny, and said Theresa Walling and Edward Hopping, to the best of their knowledge and belief deny, that said commissioners gave permission to any person or persons whatever to enter on said lots, 5, 6, 7, 8, 9, and 10, before the delivery of the deed from them to said Taylor; and they further deny that any wood or timber whatever was cut off of said lots before the delivering of the deeds; and they further deny that any part of the purchase money of said lots, 5, 6, 7, 8, 9, and 10, was ever realized by sales of wood or timber, or of building lots sold off the same.

And these defendants in further answering admit the commencement and pendency of the actions of ejectment as in said bill is mentioned.

And these defendants, the said Osborn, John Hopping, and John I. Taylor, admit that I. K. Lippincott applied to the New Jersey legislature for an act to quiet their title; but they deny that by said application they represented that said deed to John I. Taylor from the commissioners was utterly void; and they admit the passage of a law, a correct copy of which is set forth in said bill of complaint from folio 98 to folio 103, as these defendants believe, but for greater certainty beg leave to refer to the act itself.

And these defendants submit, that whatever technical effects might have existed in their title by means of the title being made from said commissioners to John I. Taylor, is cured by said act; and that said deed is as good and effectual as if it had been made to said Burrowes, Lippincott, and Osborn, provided the lands were sold fairly and without fraud, and that it is apparent that the terms in said act "sold fairly

and without fraud," have reference to the time of the sale and not to the time of the delivery of the deed, and that the legislature intended only actual and not technical fraud; or that if technical fraud is included, that none such existed in this case, as neither the commissioners nor said guardian, nor any, or either of them, were in any way interested in said sale at the time thereof; and these defendants further submit, that if said sale was made fairly and without fraud on the 4th November, 1829, and the individuals interested at the time of the sale should, at the time when the deed was executed, have parted with their interest to other persons, and requested the commissioners to execute such deed to said other person; that if the commissioners received the said purchase money and made the deed in pursuance of such request and for a sufficient consideration, that such deed must necessarily have been executed in good faith; and that for the commissioners to have refused to make such deed, or to have made it to any other person than the one to whom they were directed to make it by the original purchasers, would have of itself been in bad faith and fraudulent, and which could be or ought to be rectified in a court of equity; and these defendants submit, that said legislature did not intend by said act to declare any construction of the law given in the case of Den vs. Lambert, referred to in the bill of complaint.

And these defendants further submit, that it was not the intention of the legislature of New Jersey that persons claiming the benefit of said act should be put to the necessity of proving anything before the sale, more than those claiming under a deed made by the commissioners to the persons reported to the court; that said act was a remedial act; that the object the legislature had in view was to remedy the evil arising from a sale made fairly to one person and the deed to another; and that as to all matters prior to the sale, a person reported to the court as the purchaser, and the person to whom such deed may have been made at such purchaser's request, should stand in the same situation.

And these defendants in further answering, the said Osborn, John Hopping, and John I. Taylor, absolutely, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, deny that said Jas. Hopping, Leonard Walling and Joseph Taylor, were unfairly and fraudulently, and under concealment, the purchasers of lots 5, 6, 7, 8, 9, and 10; and these defendants further say, that according to the best of their knowledge and belief, the said commissioners, in and by their said report of sales to the orphan's court, intended to report absolutely that said lot No. 8 was sold to said Burrowes; lots 7 and 9 to said Lippincott; and lots 5, 6 and 10 to Ezra Osborn; and that they supposed they had used language proper and apt for that purpose, and not for the purpose of any evasion, or to avoid the crime or charge of perjury; and these defendants submit, that such is the fair construction of said report; and they submit, that in point of fact and in contemplation of law, said lots were sold to said Burrowes, Osborn, and Lippincott; and as regards the commissioners and the complain-

ant, said Osborn, Lippincott, and Burrowes were the only purchasers of said lots, 5, 6, 7, 8, 9 and 10.

And these defendants in further answering absolutely deny, each for himself and herself, that they were present in court when any of said reports were made to said court, or when any of said orders were made; and they further deny that they interfered in any way, directly or indirectly, with any of said reports or orders; and they further deny, to the best of their knowledge and belief, that any fraud or imposition was practised by any person or persons whatever upon said court in relation to said estate; and these defendants, in further answering, deny that said report of sales were false and unfair, and covertly concealed the real purchasers, but, on the contrary, they assert that said report was true in every particular.

And this defendant, the said Ezra Osborn, in further answering says, that he never admitted, in writing or otherwise, at Key Port, or any where else, on the sixth day of May last, before the filing of the complainants' bill, or at any other time, that there was a company formed before the purchase of said lots 5, 6, 7, 8, 9, and 10, consisting of himself, Leonard Walling, Joseph Taylor, John I. Taylor, David S. Bray, John Hopping, James Hopping, and Isaac K. Kippincott; and that he purchased for all of said persons jointly with himself, and that no persons were allowed to purchase said lots but the company, consisting of said persons, nor anything of a like nature.

And these defendants, the said Osborn, Hopping, and Taylor, say, that one-half of the purchase money of said lots 5, 6, 7, 8, 9, and 10, were paid by the persons interested in said purchase to the commissioners before the delivery of the deed to John I. Taylor, and the balance secured by the joint and several bond of John I. Taylor, Isaac K. Lippincott, Ezra Osborn, Joseph Taylor, John Hopping, Daniel Walling, sen., and Primrose Hopping, according to the conditions of sale, which was ample security for the same; and these defendants, in further answering, deny that any terms or conditions of sale of said estate were so extended to the purchasers of other lots than 5, 6, 7, 8, 9 and and 10, the better to conceal any fraud of said commissioners and others, or in order to secure the greater facility in managing the lots so numbered, in laying out the streets and lots, and erecting wharves upon the shores.

And these defendants, in further answering say, that the true and only conditions of said sale are correctly set forth in the answer of Isaac K. Lippincott, and that there were no other or secret conditions of sale whatever, and that all the conditions of sale were kept posted up during the sale, and alike accessible to all, to the best of these defendants' memory, knowledge and belief; and they further deny that the laws of New Jersey require, or that, according to the course and usage of commissioners, they should have prefaced, adopted, and made known, long previous to the offer of said real estate for sale, the conditions of the sale proposed; on the contrary they assert that the universal custom in the part of the country where this sale took place was to make known

the conditions of sale not otherwise than these conditions were made known.

And these defendants, the said John I. Taylor, Ezra Osborn, and John Hopping, absolutely, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, deny that the true and real conditions of said sale were that the purchasers of lots 5, 6, 7, 8, 9, and 10, and all other lots of said real estate, should have right to enter forthwith after the auction upon said lands, and there to have right to cut down all or any of the wood and timber there growing; and they deny that any part of the purchase money was so raised; and they further deny that there was any such proviso, secret or otherwise, in the conditions of sale, as that the persons who should appear to be purchasers, and be recognised as such by the commissioners, should be approved by the commissioners, or by them and the said John I. Taylor, Joseph Taylor, Lippincott, Osborn, John Hopping, David S. Bray; and these defendants further, the said John Hopping, and John I. Taylor, and Osborn, absolutely, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, deny that said sale was a mere sacrifice of said property, unlawfully contrived and intended for the gain and benefit of said commissioners, and to cheat and defraud the complainants in any respect whatever; and these defendants in further answering say, that they have no knowledge whatever whether Leonard Walling said some time before the vendue that said lot No. 8 would be a good place to build a dock or not, and that a company ought to be formed and build a town and have a packet, and that he was trying to pick up a company to join him for that purpose or not, but these defendants do not believe he ever said so.

And these defendants, the said Osborn, John I. Taylor, John Hopping, absolutely, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, deny that the whole sale of said real estate was managed unfairly and fraudulently, to obtain that part of said land which might be afterwards resold for building lots and other improvements, and which might be paid for out of the proceeds of the timber and wood which might be cut from said lots 5, 6, 7, 8, 9, and 10; and they further deny, that the better to conceal said design the commissioners extended to the purchasers of other lots the benefits of said terms and conditions, but in fact making these terms known only to the persons whom they were willing to admit as purchasers, or that said sale was fraudulent in any respect whatever.

And these defendants further, to the best of their knowledge and belief, deny that the said Daniel Holmes, immediately after his said purchase of James P. Kearny, communicated to said Joseph Taylor any purpose of obtaining an order to sell the whole of said estate, or that the said Joseph Taylor assented to any such views.

And the said Osborn, John Hopping, and John I. Taylor, absolutely deny, and said Edward Hopping and Theresa Walling to the best of their knowledge and belief deny, that thereafterwards the said James Hopping, Leonard Walling, and Edward Taylor, with the assent and

fraudulent collusion of said Joseph Taylor, together with said Osborn, Lippincott, John I. Taylor, and John Hopping, carried into effect said sale, and realized large or any proceeds from the sales of wood and timber off the same.

And this defendant, the said John Hopping, denies that he has now, or has had possession, or owned since the commencement of this suit, any part of said Key Grove property, but on the contrary says, he sold out all his interest therein before he heard or had any intimation of any difficulty in relation to the title of said property. And the said John I. Taylor says, that he has not now, and has not had since the commencement of this suit, possession of, or owned any part of said estate, but sold out all his interest therein before the commencement of said suit, and before he heard or knew of any difficulty about the title.

And the said Edward Hopping in answering says, that no part of said Key Grove property is now in the possession of, or owned by, the children or heirs of James Hopping; on the contrary, he asserts that himself and the other children of James Hopping sold out all interest in said estate before the commencement of this suit, and before this defendant, and, so far as he knows or believes, before his brothers and sisters, had heard or knew of any difficulty in relation to the title of said property.

And the said John I. Taylor, Edward Hopping, and John Hopping submit that said bill should be dismissed as to them with costs. And this defendant, the said Ezra Osborn, admits that he now owns and possesses the part of said property set off to him by the deed of partition of 21st of May, 1832; and also the part set off in said deed to John I. Taylor, and the undivided half of lot No. 1 in said deed of 21st May, 1832, set off to John and James Hopping, and two small building lots.

And the said Theresa Walling says, that she and her brothers and sisters still own and possess the lot set off to her father in the deed of partition of 21st May, 1832, and three building lots, on one of which her said father built a house and barn before his death, and in which his family now live.

And these defendants in further answering say, that they do not know with what object said Daniel Holmes purchased out the interest of James P. Kearny, but each of these defendants, each one for himself and herself, denies, to the best of their knowledge and belief, that said Holmes purchased with a view of forcing a sale, so that a company which he should form might purchase the part of said estate which could most conveniently be laid out in lots for building, and occupied as a seaport town.

And these defendants in further answering admit the death of John W. Holmes, but they deny that he died intestate.

And these defendants in further answering deny, that in making said plan of said land the quantity is not truly stated in said map of Leonard Walling, and that a less quantity is stated in several of the lots than said lots really do contain.

And these defendants admit the power of attorney from James Hop-

ping and others to John I. Taylor, referred to in the bill, but for its date, contents, and true construction, refer to the deed itself. And they also admit the deed of partition referred to in this bill, but for its date, contents, and true construction, refer to the bill itself. And they further admit the commencement of the suits in ejectment as in said bill is charged, and the pendency of one of them as in said bill is charged. And they further state, that said suit in ejectment against Vanderbilt came on for trial at the last October term of this court, when upon the trial the complainants' counsel, in their argument to the jury in summing up the case, expressly disavowed any charge of actual fraud on the part of the commissioners or others in the sale of said estate, as these defendants have been informed and believe. And they admit that there are a large number of ter-tenants who hold under the said deed from the said commissioners to John I. Taylor, who have paid their purchase money, and put houses, barns, shops, stores, mail-line, and other valuable and permanent improvements, upon the same to a very large amount, and they submit that such ter-tenants should be made parties hereto, and that the complainants should, before they recover the property back again, pay to the persons entitled thereto the purchase money with interest, with the value of the improvements put upon the same. And they deny, to the best of their knowledge and belief, that the complainants or their agents have been deterred from making inquiries who are the occupants of the several lots by threats of violence or otherwise.

And these defendants in further answering, to the best of their knowledge and belief, deny that said commissioners were appointed by the procurement of said Daniel Holmes, or that he procured their appointment with the purpose of procuring a report that no partition could be made without great prejudice to the owners. And they further deny, to the best of their knowledge and belief, that D. Holmes communicated any such intention to Joseph Taylor, or that said D. Holmes or Joseph Taylor had, at any time previous to or at the sale on the 3d and 4th November, 1829, any view to the formation of a plan of a town and seaport on the premises, or to setting up building lots thereon for sale upon speculation. And they further deny, to the best of their knowledge and belief, that said commissioners were consulted or agreed to serve, previous to their appointment by the orphan's court aforesaid, and agreed to make a report that no partition of said estate was practicable without injury to the owners. And they further state, that to the best of these defendants' knowledge and belief, such report of the commissioners, that said estate could not be partitioned without great prejudice to the interest of the owners, was the opinion of the said commissioners upon survey and examination of the premises, and that said commissioners so reported under oath without any fraud, covin, or collusion whatever, and that satisfactory proof was made to said court that partition of said estate could not be made without great prejudice to the interest of the owners. And these defendants, in further answering, deny that said report, that partition could not be made without prejudice to the interest of the owners, was made unfairly and with

fraud, so as to procure the said order of sale; but they assert that it was done fairly, and in the honest discharge of their duty, and in the due course of legal proceedings. And these defendants, to the best of their knowledge and belief, deny that, in the order at large of said sale it was by and through the procurement of the said commissioners, and said guardian and others, falsely and fraudulently set forth and alleged, that it appeared by satisfactory proof to said court that said land could not be divided without great prejudice to the interest of the owners, but they aver the truth to be that such proof was offered to said court. And these defendants deny that said court were induced to grant said order wrongfully, only upon the assent of the guardian aforesaid concurring with the representations and statements of said commissioners, unfairly and fraudulently intended and made to defraud the complainants, but these defendants on the contrary aver that said order of sale was made legally and fairly, and in the due and fair course of legal proceedings. And these defendants, Osborn, John Hopping, and John I. Taylor, absolutely deny, and the said Theresa Walling and Edward Hopping, to the best of their knowledge and belief, deny, that in view of obtaining such order of sale said Daniel Holmes, Joseph Taylor, Richard C. Burrowes, E. Osborn, I. K. Lippincott, Primrose Hopping, James Hopping, and Leonard Walling, formed a company to purchase lots 5, 6, 7, 8, 9, and 10, and that by the terms of their agreement they were permitted by said commissioners and guardian to enter upon said lands, and cut and carry away the timber and wood growing thereon, and did sell the same, and realize $30,000, or any other sum, before the execution of the deeds. And these defendants, to the best of their knowledge and belief, deny that said report that said estate could not be partitioned, and was made to deceive the judge, and fraudulently obtained by the defendants in this cause or others, but these defendants say, that said report was, in the opinion of these defendants, true. And they further deny, to the best of their knowledge and belief, that the order approving the sales, and directing deeds to be made, or any other orders relating to said estate, was, or were, obtained fraudulently in any respect whatever. And these defendants aver, that all the proceedings, acts, and orders of said commissioners, and of said court, are free from all unfairness and fraud whatever, so far as these defendants know, and as they verily believe.

And these defendants, in further answering, the said Ezra Osborn, John Hopping, and John I. Taylor, absolutely, and said Theresa Walling and Edward Hopping, to the best of their knowledge and belief, say, that the map annexed to the bill with the lots bounded with the red lines, and the number of acres in the lots bounded by red lines without the names, and the lots bounded by black lines, is a true copy, as far as it goes, of all the names and figures upon the original map made by Leonard Walling, and that the lots bounded by red lines were part of the map made in October, 1829; and that the lots bounded by black lines, and the names thereon, were put there at the time of the partial partition in 1832, but, for greater certainty, refer to the map itself. And these defendants expect the said Walling kept said

map for convenience of reference—no law, as these defendants are advised, making it obligatory upon the commissioners to file it; and these defendants say that, to the best of their knowledge and belief, the computation of the quantity of land contained in said lots respectively, is correct, and that said map includes all the shore in front of the lots, down to low water mark. And these defendants, the said Osborn, John I. Taylor, and John Hopping, say that it was not, at any time before the sale of November, 1829, their wish or expectation, or the wish or expectation of any other of the defendants, so far as they know or believe, to acquire the said property for the purpose of establishing a seaport town, or for any other purpose, except so far as said Osborn wished lot number 1 for agricultural purposes. And these defendants, the said Osborn and Taylor, do not remember that they had any thought at all at the sale whether the commissioners or guardian might or might not be lawfully interested in the purchase of said property. And these defendants in further answering say, the said Osborn, Hopping, and John I. Taylor, absolutely, and the said Theresa Walling and Edward Hopping, to the best of their knowledge and belief, say, that the first plan of a town that was formed was at the survey of Leonard Walling, of twenty-four lots, on the 9th April, 1830, and that the size and formation of the fifteen lots was made, so far as these defendants know, and as they believe, with the sole view of getting it into the best possible form for sale.

And this defendant, the said Theresa Walling, denies that her father ever kept the said map concealed in any way whatever. On the contrary, she asserts that she has been informed that some time in the summer of 1840, George Sullivan, as the agent of the complainants, and Miss Anne E. Kearny, called at her father's house, and in his absence took a copy of said map, and left word that they wished her said father to make a copy for them; that her father accordingly made out said copy, but that said complainants never called for or paid for it.

And these defendants in further answering say, that the conveyances of said property, so far as they are acquainted with the same, are correctly set forth as to parties, dates, and place of recording, in the answer of Isaac K. Lippincott.

And these defendants in further answering say, that the map hereto annexed, marked B, exhibits the said Key Grove property as it is now cut up into lots, and the painted lots on the same denote the lots which have been built upon, and that the buildings and improvements put upon the same by persons holding under said commissioners since the sale by the commissioners, amount, as near as these defendants can estimate the same, to the amount [of] one hundred thousand dollars, of which about sixty thousand dollars are upon lots 5, 6, 7, 8, 9, and 10, in said deed from the commissioners to John I. Taylor.

And these defendants in further answering state, that the sketch of said property hereto annexed, marked C, contains a rough sketch of said property as it is now cut up into lots, with the owners' and possessors' names marked upon each lot, each of which said owners hold

under conveyances from said commissioners, and most of whom have built and improved their said lots since said commissioners' sale; and these defendants insist that the said persons named in said sketch, marked C, should be made parties to this suit, and they pray that this bill may be dismissed for want thereof. And these defendants insist and submit, that before any order is made, affecting their title injuriously, that an account may be taken, under the decree of this court, of the purchase money received by the said complainants, arising from said sales by the said commissioners, and also of all the permanent and beneficial improvements put upon each and every portion of said estate, and that the complainants be decreed to pay to the defendants, and others interested, the amount of said purchase money, and the value of said improvements, with interest and costs. And these defendants, the said John I. Taylor, and Ezra Osborn, and John Hopping, absolutely say, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, say, that the deed to John I. Taylor, from the commissioners, was made with the consent of said Burrowes, Lippincott, and Osborn, and, so far as they know and believe, with the consent of all persons interested therein, and that it was recited in said deed that said Lippincott, Osborn, and Burrowes bid for lots 5, 6, 7, 8, 9, and 10, for and in behalf of John I. Taylor, not because such was the fact, but because, as all persons interested wished it made to said John I. Taylor, and it would save some expense and trouble to make it directly to John I. Taylor, and it was thought it would give greater consistency to the record so to recite it, and these defendants submit that it was legal and proper for the commissioners so to do. And these defendants, Ezra Osborn, John Hopping, and John I. Taylor, say positively, and the said Edward Hopping and Theresa Walling, to the best of their knowledge and belief, say, that it was so recited in said deed, not to perpetrate any fraud, or to conceal any fact whatever, but that the commissioners were only doing what was customary in the execution of sheriffs' deeds, and in other cases of commissioners' sales in said county, in cases where owners had changed between the sale and the time of the delivery of the deeds, and these defendants submit that the same was good and valid in law.

And these defendants in further answering say, that they have no means of knowing what wood was cut off of lots 5, 6, 7, 8, 9, and 10, prior to the partial partition among themselves by deed of May 21st, 1832, except from the books of Leonard Walling, who kept the accounts, and that, so far as they can ascertain from his books, the whole gross amount of wood cut off of lots 5, 6, 7, 8, 9, and 10, prior to said partial partition, came to the sum of two hundred dollars, and that the value of the wood upon such parts of 5, 6, 7, 8, 9, and 10, as were not partitioned by the deed of 21st May, 1832, was of but very little value, and the whole amount sold therefrom after partition of 1832, so far as they can ascertain, was fifty-two dollars and fifty-six cents. And this defendant, the said Osborn, says that he cut, during the years 1833, '4, '5, and '6, all the wood on the lots 2 and 3 in the par-

dition of May, 1832, and that the gross amount of sales for the same was between $900 and $1,000, out of which the nett proceeds, after paying cutting, carting, and freight, amounted to about $600; and that about two years since this defendant and Garret H. Hendrickson cut off all the wood on lot number 1 of said partition of May, 1832, and that the gross amount of sales amounted to about $700; and that no wood or timber was cut off of said lots 1, 2, and 3, in the partition of eighteen hundred and thirty-two, until the partition, except, perhaps, a few pine logs for the dock; and no other wood or timber was cut off the same after the partition of 1832, except as aforesaid.

And these defendants in further answering say, that after the deed was delivered by the commissioners to John I. Taylor, the persons then interested went to work to improve said property by selling lots cheaply to draw settlers, and by building a dock, tavern, storehouse, &c., and at their own costs and expense built two sloops, and run them from Key Port to New York; and that they expended several thousand dollars in and about these improvements exclusive of the sloops; and that, as far as these defendants can ascertain, the said John I. Taylor, and Lippincott, Bray, Osborn, John, James, and Primrose Hopping, and Leonard Walling, would have been greatly the losers by said operations, had it not been for the earnings of the said sloops. And these defendants in further answering say, that it appears, in and by said bill of complaint, that Oliver Vanderbilt, one of the defendants therein, is a citizen and resident of the State of New York; and they submit that this court has no jurisdiction of the cause; and they claim the same benefit of this exception as if they had demurred to said bill, or specially pleaded thereto. And this defendant, the said Theresa Walling, says that her brothers and sisters, in said bill named, are minors under the age of twenty-one years.

And these defendants in further answering say, that David S. Bray, named in said bill, died before the commencement of this suit, leaving eight children, who are his heirs, viz., James Bray, Warren Bray, (the names of the others are not recollected,) who are at present resident in said county of Monmouth, all of whom are minors; and these defendants insist that the said children of Bray should be parties to this suit, and they claim the same benefit of exception therefor as if they had demurred to said bill, or specially pleaded the same. And the said defendant, Theresa Walling, says that she has two brothers, viz., Jacob and Leonard Walling, who are not parties to said bill, and these defendants claim the same benefit of exception as if the same were specially pleaded. And this defendant, John Hopping, says that there has been no wood or timber cut off of lot No. 6, in the partition of 1832, since the said partition; and the said John I. Taylor says, there was no wood or timber cut off of lot No. 7, in the said partition of 1832, before he sold the same to Ezra Osborn. And the said John Hopping says, that improvements and buildings have been put upon said lot No. 6, in the partition of 1832, to the amount, as near as this defendant can ascertain, to the value of $3,500, since the said partition of 1832.

And this defendant, the said Theresa Walling, says that her said father did not cut any wood off of lot No. 5, in said partition of 1832, for market, but cut some for fire wood, but to no much value; and that he put upon said lot No. 5, and the other lots now owned by his said heirs, improvements, as near as she can ascertain the same, to the amount of $2,000. And these defendants submit, that said deed from said commissioners is good and valid in law, or, if not valid, that before said complainants recover said premises, or impair the title of the present owners, that they pay the purchase money back and the improvements; and that said deed, if void at all, is void only so far as regards the said commissioners. And these defendants submit, that said decree of the orphan's court is good and valid, and not impeachable in any collateral way.

And these defendants in further answering say, that Thomas Kearny and Catharine Kearny, Anastasia Thomas and her husband, George C. Thomas, four of the said complainants, have sold out all their interest in said Key Grove property, by proper and legal conveyances, to Anne E. Kearny, and they submit their said bill should be dismissed therefor; and that the said Thomas and Catharine Kearny, and George C. Thomas and wife, have no interest in this suit.

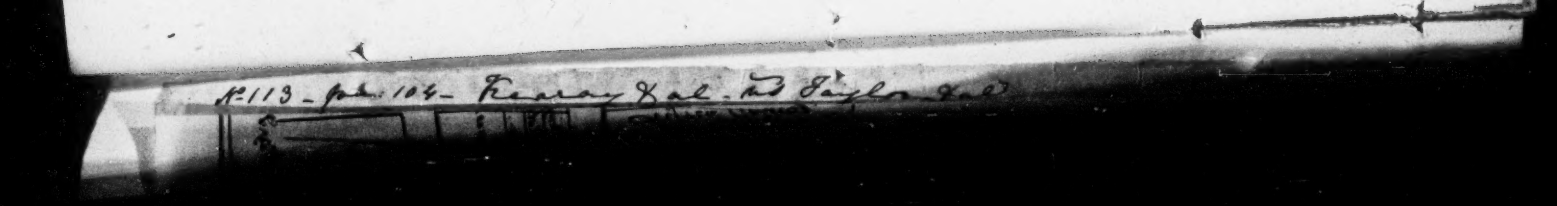
And these defendants in further answering say, that the said Key Grove property brought, at said commissioners' sale, several thousand dollars more than it was generally considered to be worth. And these defendants charge the truth to be, that said map of Leonard Walling, so far as regards the general outlines, was made in June, 1829, and so far as regards the division of it into 15 lots, in October, 1829.

And these defendants deny all and all manner of unlawful combination or confederacy in the said complainants' bill charged against them, without that there is any other matter or thing, in the complainants' said bill of complaint contained, material or effectual for these defendants to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, or prove, as this honorable court shall award, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor and of counsel with defendants.

UNITED STATES OF AMERICA,
District of New Jersey, ss.

Ezra Osborn, John Hopping, John I. Taylor, Edward Hopping, and Theresa Walling, of the county of Monmouth in said district, being severally duly sworn according to law, severally depose and say, that the matters, facts, and things set forth in the foregoing answer, so far as they are stated as of, or relate to, their own respective knowledge, acts, and deeds, are true; and so far as they are stated upon the inform-


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ation of, or relate to, the acts and deeds of others, they believe them to be true.

JOHN HOPPING,
EZRA OSBORN,
JOHN I TAYLOR,
EDWARD HOPPING,
THERESA WALLING.

Sworn and subscribed this 2d day of June, 1843, before me, a commissioner of said court.

DANIEL B. RYALL,
Commissioner, &c.

Circuit court of the United States of America, for the district of New Jersey, in equity.

Between THOMAS KEARNY, Catharine Kearny, Anne E. Kearny, Anastasia Thomas and her husband, George C. Thomas, and Horatio N. Kearny, complainants,
and
JOHN I. TAYLOR, Edward Taylor, and Isaac K. Lippincott, and others, defendants.

The several answer of Isaac K. Lippincott, one of the above defendants, to the bill of complaint of the above complainants, this defendant, saving and reserving to himself all and all manner of advantage of exception to the many errors, imperfections, untruths, and uncertainties in the said bill contained, for answer thereunto, or unto so much thereof as this defendant is advised is material for him to make answer unto, he answering says, that in the year 1819, having just come of age, he removed from Burlington county, N. J., to Freehold, New Jersey, about 14 miles distant from the said Key Port property, and set up business there as a merchant, and has ever since continued to reside and do business there as a merchant.

And this defendant in further answering says, that some time previous to the year 1829, his attention had been called by William Rossell, esq., then one of the justices of the supreme court of New Jersey, with whom he had long been intimate, to the planting and raising of oysters, and this defendant had come to the conclusion, that in favorable localities, and where they could be protected as private property, the raising of oysters would be a profitable business.

(For plat, see original, page 104.)

And this defendant in further answering says, that shortly before the said sale of said Key Port property by the said commissioners, on the 3d

and 4th November, 1829, the peach had begun to be cultivated with such success upon the poorer and lighter soils of Monmouth county, as to induce him to believe that, near the navigable waters of Raritan bay, it could be pursued with advantage. And this defendant in further answering says, that at and previous to the said sale of said commissioners on the 3d and 4th November, 1829, he was a stranger to said Key Grove property and its neighborhood, having never been upon said Key Grove property but twice, once in 1821 or 1822, when he dined on a Sunday with said Edward Kearny, and once after he saw the advertisement of sale of the said commissioners hereinafter set forth.

And this defendant in further answering says, that the sale of said Key Grove property by the said commissioners took place on the 3d or 4th of November, 1829, several years before the fictitious rise in landed property, which took place in the years 1834, '5, and '6, and several years before the mania for speculation in town lots and real estate, which afterwards became so general, had exhibited its first symptoms even in the Atlantic cities.

And this defendant in further answering says, that for several years before and after the year 1829, wood, produce, and land in said county of Monmouth were low, agriculture at a low ebb, and but little surplus capital accumulated among the farmers.

And this defendant in further answering says, that the first notice he had, and the first that he knew, that said Key Grove property was to be sold, was from seeing the advertisement of sale of the said commissioners, either in a printed handbill, or in the public newspaper, and that he never had the most distant idea of purchasing or becoming interested in any part of the said Key Grove property, until after he saw said advertisement, of which the following is a copy, viz.,

Commissioners' sale.

In pursuance of an order of the orphan's court of the county of Monmouth, in the term of July, 1829, will be exposed to sale at public vendue, on Tuesday, the 3d day of November next, on the premises, all that farm at Key Grove, in the township of Middletown, in said county, late the property of Edmund Kearny, deceased, containing 781 acres, 350 of which is wood land, the residue arable land and meadow. On said farm is a good two-story dwelling house, with a kitchen adjoining, an excellent barn, wagon house, and other out buildings; an apple orchard and a variety of other fruit trees. The location of said farm, which is on the easterly side of, and adjoining to, Brown's Point cove, which is the best harbor on Raritan bay between Sandy Hook and South Amboy; the small expense for which docks and piers may be built on the same, which vessels could come to or go from at almost any time of tide; the small expense for which wood may be put on board of vessels, the certainty of its becoming the place of exportation for the greater part of the produce of the county, if properly managed; the advantage of cultivating oysters in Rapatoting creek which belongs to said farm, and the quality of the soil, which may be so well adapted

to the growth of market truck, makes it a most desirable property for the speculator, the capitalist, and the agriculturist that can be offered in the county of Monmouth. Said farm will be divided into several lots or tracts, and sold separately or altogether, as may best suit purchasers. Vendue to commence at 12 o'clock, noon, and continue from day to day till all is sold, where attendance will be given and conditions made known by

EDWARD TAYLOR,
JAMES HOPPING,
LEONARD WALLING, } *Commissioners.*

September 1*st*, 1829.

And this defendant further answering says, he has been informed, and believes it to be true, that the said commissioners caused the said notice to be published for the time required by law, in the Monmouth Inquirer, a newspaper printed and published and circulated in said county of Monmouth; and also in the newspaper, published and circulated in the city of New York; and also in printed handbills, which were not only put up in the places, and during the times, required by law, but also circulated the same otherwise extensively through the country.

And this defendant in further answering says, that his attention was attracted by the said advertisement, and that it was the first thing that suggested to him the buying of any part of said property, not on account of its alleged commercial advantages, which this defendant then thought to be the usual commendation of venders to draw public attention, and get the highest price for the property, but on account of its advantages for cultivating oysters in Rapatoting creek, and for raising peaches and truck for the New York market. And that this defendant, in consequence of seeing said advertisement, was induced to visit said property as aforesaid just before said sale, to view the same, and after having viewed it, came to the conclusion to bid for the Rapatoting creek, and such part of the homestead as might be set up with it, if it were put up in lots to suit him, and in pursuance of said design, attended at the time and place of sale, on the 3d and 4th November, 1829, and put up at the house of Septimus Stevens, who kept and owned one moiety of the inn at Brown's point, which was about one-fourth of a mile from the westerly line of said Key Grove property.

And this defendant in further answering says, that from 50 to 100 people, of the most substantial inhabitants, farmers, merchants, and others from the surrounding county, and a larger concourse of people than usually attends such sales, attended both days of sale.

And this defendant in further answering says, that before the said sale commenced on the 3d and 4th of November, 1829, and during the whole time of its continuance, the said commissioners exhibited for public inspection the said map of the said Leonard Walling, which then contained the general outlines or boundaries of the tract, with the lots numbered from 1 to 15, and bounded by the red lines laid down

upon the same, with the number of acres contained in each; but not the lots bounded by the black lines, and numbered from 1 to 8, having the names of Ezra Osborn, John I. Taylor, D. S. Bray, L. Walling, and J. Hopping, Joseph I. Taylor, and I. K. Lippincott, which were not put on till some time afterwards, as will be hereinafter stated.

And this defendant in further answering says, that said first mentioned lot No. 1 contained 224 82-100 acres, and embraced so much of said Rapatoting creek as was fit for raising oysters in; that about 40 acres of it on the south side was wood land; that it also embraced what of improvements were upon said property, such as the buildings, orchards, fruit trees, &c., with the exception of the said tenant's house, which was upon lot No. 14, an old rickety affair, and worth but very little, and that the said $30 per acre was the full and fair value for said 224.82, and fully as much as it was reasonably worth, and more than any other person was willing to give for the same. And this defendant in further answering says, that in the forenoon of the 3d of November, 1829, after he arrived at the place of sale, he believes he examined the lots as they were laid down on said map, and numbered from 1 to 15, and perceiving that lot No. 1 included as aforesaid the said Rapatoting creek, and sufficient of the clear land for this defendant's purpose of raising peaches and truck for the New York market, he determined to bid for it, and that if lot No. 1 should happen to be struck off to him, also to bid for lot No. 9 on account of its relative position to lot No. 1, and for lot No. 7, because it adjoined No. 1, and had considerable wood upon it.

And this defendant in further answering, avers the truth to be, that before the opening of the sale on the 3d November, 1829, before the sale commenced, the commissioners publicly put up the conditions of sale in writing; I caused the same to be read and proclaimed to the people present, and that the substance of the said conditions, so far as this defendant can now remember the same, were that the highest bidder should be the purchaser; the purchaser to pay one-half of the purchase money on the 1st of April then next, when the title would be given, if the orphan's court should confirm the sale; the other half of the purchase money to be paid in one year from the 1st of April then next, without interest, the purchaser giving approved security.

The vaults with the lands paled in, and also the crops of the tenant for the year 1829, were reserved, and fire-wood for the tenant's use to 1st of April, 1830, to be taken from lot No. 1.

Persons purchasing and not complying, the property to be sold a second time, and if it should bring less than at the first sale, the first purchaser to make good the deficiency, but if it should bring more, the first purchaser not to be benefitted thereby, the commissioners reserved the right to adjourn on the highest bid to some future day, not to exceed thirty, and that the purchasers should sign the condition as soon as the property was struck off, and that there were no other conditions of sale either publicly expressed or privately expressed, or intimated, or hinted in any way at the sale, or at any other time by the said commis-

sioners or any or either of them, or by any other person, either directly or indirectly to this defendant, or to any other person or persons whatsoever, so far as this defendant knows, and as he verily believes.

And this defendant in further answering says, that on the first day of sale, at the time and place appointed therefor, the said sale was opened in the usual way, by the said commissioners, in the presence of the people there attending and of this defendant; and this defendant believes lot No. 2 was set up and sold to Thomas Carhart, as the highest bidder, for $28 25 per acre; lot No. 3 to Amos Walling, for $26 75 per acre, and lot No. 4 to Jonathan Tilton, for $38 50 per acre; that lot No. 1 was also set up, and not being bid up higher than about $23 per acre, the said commissioners exercised their reserved right of adjournment at that bid until the next day, and that No. 8 was also set up on the first day of sale, and the said commissioners not being able to get a bid higher than about $28 or $29 per acre, to which it was bid up, exercised the like right of adjournment, and adjourned it at that bid till the next day, in the hope that it might then be bid up higher; that in the forenoon of the second day of sale, to wit, the 4th of November, 1829, said lot No. 1 was again set up in pursuance of said adjournment, and continued up till about noon, when it was in a fair, open manner, cried off and sold for $30 per acre, to this defendant as the highest bidder.

And this defendant in further answering says, that he bought the said lot No. 1 in pursuance of his previous intention as aforesaid, with the object and purposes aforesaid of raising oysters, peaches, and truck for the New York market, and that he would not have bought it had he not then believed that he could raise the same there with advantage, and that he bought the same of his own mere motion, without being concerned with any one, and without any expectation or belief that any town would or could be built on the said Key Grove property, or any part thereof, or that any profit could be realized by selling off town lots from the same, and that he had no knowledge, nor had it ever been told, intimated, or hinted to him in any way, that the said order of sale had been brought about by any person or persons whatever, for the purpose of buying or speculating in the said Key Grove property, or any part thereof; nor has he ever believed, nor does he now believe, that said sale was so brought about, and that he had no knowledge, belief, or suspicion, that any fraudulent combination, or any combination, lawful or unlawful, had been formed for the purpose of bringing about a sale of said Key Grove property, or for any purpose whatever; but he found the said property advertised for sale by persons of responsibility and character, professing to act under proper authority, and he presumed and believed, that all was fairly, legally, and honorably done; and this defendant avers that said $30 per acre for lot No. 1, was its fair value, and more than any body else was willing to give for the same.

And this defendant in further answering says, that on the said 4th November, 1829, after said lot No. 1 was sold to this defendant as afore-

said, and before lot No. 8 was put up, and while the sale had been adjourned for dinner, he was solicited by the said Daniel Holmes and Septimus Stephens to join and buy said lot No. 8; and that for the purpose of inducing this defendant to join in purchasing lot No. 8, said Stephens represented to this defendant that Joseph Ellis, and persons at Middletown Point, a village about two miles distant, had joined together to buy said lot No. 8, for the purpose of preventing improvements being put upon lot No. 8, which might interfere or lessen the value of their property at Middletown Point; and said Stephens and Daniel Holmes further urged that a company should be formed to prevent its falling into their hands and to purchase it.

And that this defendant, inasmuch as he had then become the purchaser of lot No. 1, and it was evidently his interest that lot No. 8 should not fall into the hands of persons whose interests were adverse to the Key Grove property, consented to be one of several others to join and buy said lot No. 8; that said Daniel Holmes then proceeded to hunt for others to join in the said purchase, and left us for that purpose, as he said; after a short time the said Holmes returned, and reported that he had found several who would join with us in buying said lot No. 8, and mentioned the names of Osborn and Burrowes; and in a consultation between the said Stephens, Holmes, Burrowes, Osborn, and this defendant, it was then agreed that lot No. 8 should be purchased on said joint account, and that said Burrowes should be the bidder.

And this defendant charges the truth to be, that said Holmes did not speak to either of the said commissioners or guardians to join in said purchase, or if he did, that they declined it, and that there was no understanding, directly or indirectly, that said commissioners or guardians should be interested in said purchase; or if there was, or if said Holmes spoke or agreed with either or any of them, this defendant expressly avers that it was without the knowledge and consent of this defendant.

And this defendant further says, that he was induced to join in said purchase by the said representation of said Holmes and Stephens, and that he did not want, and had no intention of bidding for or buying said lot No. 8, nor did he want it on his individual account, and should not have joined in it but for the said solicitation of said Holmes and Stephens.

And this defendant in further answering says, that according to the best of his recollection and belief, that upon said sale being re-opened in the afternoon of said 4th November, 1829, said Burrowes bid for said lot No. 8 in pursuance of said agreement, and that it was struck off and sold by the said commissioners, openly and fairly, to the said Burrowes, for the said sum of $43 per acre, as the highest bidder.

And as this defendant then thought and believes, and as he still thinks and believes, the said Burrowes was the only person then known to the commissioners as the purchaser; and this defendant charges that he was the only person legally responsible for the purchase money, and amply able to pay the same.

And this defendant charges, that $43 per acre was as much as said lot No. 8 was worth, and more than anybody else bid for the same.

And this defendant in further answering says, that after lot No. 8 was sold as aforesaid, the said commissioners set up lot No. 9, which was finally struck off and sold to this defendant in a fair and open manner, for the sum of $18 50 per acre, as the highest bidder; that he was the only person then known, as this defendant believes, as the purchaser, to the commissioners, and the only person responsible to them for the purchase money, and amply able to pay the same; and that the said $18 50 per acre was as much as said lot No. 9 was worth, and more than anybody else was willing to give for the same.

And this defendant in further answering says, that after the sale of No. 9, as aforesaid, lot No. 7 was set up by said commissioners, and finally cried off and sold to this defendant as the highest bidder therefor, at $25 25 per acre; and he charges and believes that he was the only person then known to the commissioners as the purchaser, and responsible to them for the purchase money. and amply able to pay the same.

And this defendant in further answering says, that after the said sale of lot No. 7, the lots 5, 6, and 10 were consecutively put up, and finally were cried off and sold, one after the other, in a fair and open manner, to Ezra Osborn, as the highest bidder therefor respectively, viz., lot No. 5, at $22 50; lot No. 6, at $13 25; and lot No. 10, at $11 75, per acre; and this defendant believes that said Ezra Osborn was the only person then known to the commissioners as the purchaser, and the only person responsible to them, and well known to be amply able to pay the same; and the prices for which said lots were respectively struck off was, to the best knowledge and belief of this defendant, as much as they were worth, and more than anybody else would have given for the same.

And this defendant, in further answering, charges the truth to be, that after lot No. 10 was struck off as aforesaid, lots 11, 12, 13, 14, and 15, were consecutively struck off and sold in a fair and open manner by the commissioners to the following persons respectively, viz.: lot No. 11, to James Sprowl, for $33 50 per acre; lot No. 12, to Thomas G. Walling, for $33 per acre; lot No. 13, to Amos Walling, for $29 50 per acre; lot No. 14, to Joseph Carhart, for $7 per acre; and lot No. 15, to Horatio N. Kearny, one of the complainants, for $12 50 per acre; which said several prices were as much as the said respective lots were worth, and more than any other persons than the said respective purchasers would have given for the same, to the best knowledge or belief of this defendant, and which said sales amount in the aggregate to the sum of $19,941 19; and that the chief value of said last mentioned lots, viz., 11, 12, 13, 14, and 15, consisted of the wood upon them, and the quantity of which was indicated by the prices which they respectively brought.

And this defendant in further answering says, that the said agreement between himself, Holmes, Stephens, and Burrowes, was a mere

loose, verbal agreement, got up on the spur of the moment, through the influence of the said Holmes and Stephens; and that the only object of said Holmes was to increase the price of the property as it was his interest to do, and that said agreement was originally only to purchase said lot No. 8; but that after they got upon lot No. 9, and about the time it was set up, something was said by Daniel Holmes or Ezra Osborn that it would be right for us, as we had bought No. 8, to own No. 9 also; but no definite understanding was had upon it, and this defendant continued to bid for it upon his individual account in pursuance of his said original intention as aforesaid, until it was cried off to him as aforesaid; but some weeks afterwards, upon an allegation of Daniel Holmes that he thought this defendant was bidding for those who purchased No. 8 as aforesaid, he assented to let it go with No. 8.

And this defendant in further answering says, that after the sale of No. 9 as aforesaid, the commissioners and people present went upon No. 7; and after it was set up, Ezra Osborn, Burrowes, and Holmes proposed that we should bid for that too; and without consultation with said Stephens or any other person, this defendant agreed so to do, intending that if the said Stephens, Holmes and Burrowes and Osborn should back out, to take the said lot No. 7 on his individual account in pursuance of his said previous intention.

After lot No. 7 had been struck off as aforesaid, the said commissioners and people present then went upon lot No. 5, which it was also proposed should be added to said joint account; but as this defendant did not want it at all individually, and this defendant being a stranger then to both Osborn and Burrowes, having at that sale for the first time been introduced to them, and it being a loose arrangement, which if this defendant became personally liable for by bidding they might back out of, this defendant refused to be the bidder, but expressed his willingness to be considered as one of the purchasers if Osborn would be the bidder, this defendant being willing to be one of the joint purchasers, and to pay his proportion, but not willing to be made liable to pay for the whole.

And this defendant in further answering says, that lots No. 6 and 10 were struck off to Ezra Osborn, under the same circumstances as lot No. 5 aforesaid; and shortly after lot No. 10 was struck off, this defendant left the sale.

And this defendant in further answering says, that he has no recollection of knowing at the time the said lots, 5, 6, 7, 8, 9, and 10, were struck off as aforesaid, that Horatio Kearny was considered one of the company, or that Daniel Holmes had spoken to him upon the subject, but heard of it before he went away after the sale had closed; and that he had no recollection, until some time after the confirmation of the sale in January, 1830, of knowing, or having heard, that Primrose and John Hopping and Leonard Walling, or any or either of them, were considered as part of the company.

And this defendant in further answering says, that all of the said lots, and all the said real estate, was sold fairly and without fraud, and

for its and their full value, and for several thousand dollars more than what it was then considered worth.

And this defendant charges the truth to be, that said real estate would not now bring more than it did then, if in the same situation.

And this defendant in further answering says, he is informed, and believes it to be true, and he so expressly charges the truth to be, that lot No. 8 was the first day only bid up to about $29 per acre, and was, while standing on the bid of those interested against its improvement, adjourned bona fide by the said commissioners, in the hopes and for the sole purpose of getting a higher price; and that on the evening of the 3d November, 1829, after the adjournment, the said Daniel Holmes, for the express purpose of getting the property run up higher, and for no other purpose, requested and prevailed upon the said Burrowes to return and help make up a company to bid for said lot No. 8, and thus to create competition; and that unless something of the kind had been done, as lot No. 8 was a poor barren soil, with no wood of any amount upon it, and as none of the persons present would buy it for the purpose of improvement, or give more for it than it was worth for agricultural purposes, that it would have been struck off for about $29 per acre to those whose interest was against improvement there; and that if that had been so, it would have injuriously affected the price of the remainder of the property; and that the effect in fact of the formation of said company was to cause said property to bring considerably more than it otherwise would.

And this defendant in further answering says, that to the best of this defendant's knowledge and belief all of said real estate was sold fairly and without fraud, and for a full and sufficient consideration, and without any fraud, actual or legal, and for the best price that could be got for the same.

And this defendant in further answering says, that he has no distinct recollection of any thing relating to said lots, 5, 6, 7, 8, 9, and 10, after said sale, until the meeting of the said surveyors of the highways, in February, 1830, when this defendant has an impression that Leonard Walling and James Hopping were then considered interested, but this defendant's memory is not very clear at this distance of time upon what was said, or whether it was then finally settled, as this defendant felt but little interest whether they were in or not, nor has he any knowledge how they considered themselves as becoming interested, except what he has since heard, viz., that they were solicited after the sale by the others to come in on account of their business qualifications.

And this defendant in further answering says, that about the first of April, 1830, before the purchase money was paid, it was finally agreed that the company should consist of the following persons, and in the following proportions, viz., Joseph Taylor $\frac{1}{8}$, John I. Taylor $\frac{1}{8}$, Leonard Walling $\frac{1}{8}$, David S. Bray $\frac{1}{8}$, Ezra Osborn $\frac{1}{8}$, John Hopping, James Hopping, and Primrose Hopping $\frac{3}{8}$, and this defendant $\frac{1}{8}$; but how and when the said Joseph and John I. Taylor, Leonard Walling, Da-

vid S. Bray, James and John Hopping, came to be considered as members of said company, this defendant does not know of his own knowledge or memory, but so far as he knows and has heard, and verily believes, it was somewhat in this mode.

Some time after the said sale, on the 3d and 4th November, 1829, and, as this defendant believes, after the confirmation by the court, the said Joseph Taylor came in by some arrangement with Daniel Holmes, having purchased him out at an advance of $40; the said John I. Taylor, by purchasing out the said Richard C. Burrowes at an advance of $40; the said Bray, by purchasing out the said Horatio N. Kearny at an advance of $40; the said James Hopping came in at the solicitation of his brothers, John and Primrose, and the said L. Walling, at the request of the other persons interested, in the place of Sept. Stephens, who had voluntarily backed out.

And this defendant believes, and expressly charges the truth to be, that the said final arrangement was not made until a short before the deed to said John I. Taylor was executed from the said commissioners.

And this defendant in further answering says, that at the time of the delivery of the deed from the said commissioners to the said John I. Taylor, one-half of the purchase money was paid to the said commissioners, by the persons then interested in said lots 5, 6, 7, 8, 9 and 10, and that the balance of said purchase money was secured by the joint bond of John I. Taylor, Isaac K. Lippincott, Ezra Osborn, Joseph Taylor, John Hopping, Daniel Walling, senior, and Primrose Hopping, which was ample security for the same.

And this defendant in further answering says, that neither of the said commissioners, and neither or any of the purchasers or persons interested in the said purchase of said real estate, or any part thereof, were members of the legal profession, or men skilled in the law, and that neither the said commissioners nor the said purchasers, nor any or either of them, had any legal counsel employed, or acted under the advice of legal counsel, so far as he knows and believes; and that both the said commissioners and the said purchasers were totally unaware of any such legal principle as is laid down in the said case of Den *vs.* Lambert, and that the said commissioners, looking merely to the substance of the thing, and unconscious of any fraud or illegality, instead of making their deed for lots 5, 6, 7, 8, 9, and 10, to Burrowes, Lippincott, and Osborn, at their request, and at the request of all those interested at the time the deed was made, made it to John I. Taylor, with an understanding with said John I. Taylor that he held it in trust for the persons then interested as aforesaid.

And this defendant in further answering says, that it is recited in said deed from the said commissioners to said John I. Taylor, as follows, viz., Ezra Osborn, Isaac K. Lippincott, and Richard C. Burrowes, for and in behalf of said I. Taylor, then and there did bid for the premises the sum of $4,683 16¼, and no person bidding more, the said tract or lot of land was, on the said 4th of November last, in due and open manner, cried off and sold to the said Ezra Osborn, Isaac

K. Lippincott, and Richard C. Burrowes, for and in behalf of the said John I. Taylor, not because in fact the said Lippincott, Osborn, and Burrowes, did bid for the same, or in behalf of the said John I. Taylor, or because in fact the said premises were cried off, and sold to the said Osborn, Lippincott, and Burrowes, for and in behalf of the said John I. Taylor, neither of which was in fact the case; but inasmuch as it was then the intention of all persons interested to encourage building and settlement upon said lots 5, 6, 7, 8, 9, and 10, and for that purpose to run off lots and sell them at cheap prices, it was desired by all interested that the deed should be made to said John I. Taylor, who was then young and unmarried, for the convenience of making conveyances, and the said commissioners being without counsel, and unconscious of any fraud or illegality, and looking only to the substance of the thing, at the desire of the persons to whom the said lots were struck off as aforesaid, and merely to avoid multiplicity of deeds, instead of making several deeds to Lippincott, Burrowes, and Osborn, made the deed directly to said Taylor, and said recitals in said deed were made, not for the purpose of concealing any fraud or fact, which they might have effectually done by making the said deeds to Burrowes, Lippincott, and Osborn, but for the sole purpose of giving consistency and formality to the record as the commissioners supposed.

And this defendant submits that, under the circumstances aforesaid, there was nothing illegal, improper, or fraudulent in the commissioners reciting as aforesaid in their said deed, and nothing contrary to their oath of office; and that there would have been much more fraud in fact, to run the estate of said Edmund Kearny to the expense of three deeds, when one would answer every purpose.

And this defendant submits that the said deed to John I. Taylor is good in point of law, and that the said case of Den *vs.* Lambert is not law in New Jersey, and that if said case is law, that the defect in said title is cured by said act of the New Jersey legislature.

And this defendant in further answering says, that at or near the time the last payment of the purchase money became due, the whole of it was paid to the said commissioners, not out of the sales of wood or timber off said premises, but out of the private capital of the said Lippincott, John I. and Joseph Taylor, Ezra Osborn, Leonard Walling, David S. Bray, James, Primrose, and John Hopping.

And this defendant in further answering says, that shortly after the deed to the said John I. Taylor, from the said commissioners, to wit, on or about the ninth of April, 1830, the said individuals interested caused Leonard Walling to survey and plot out 24 building lots, and laid down on a map, a copy of which is hereunto annexed, 16 of which said 24 lots were afterwards, to wit, on or about the 9th April, in the same year, divided, by bidding for choices, among the said company, and the names to whom they were then allotted marked down on the map, on each lot respectively.

And this defendant in further answering says, that shortly after the delivery of said deed from the commissioners to John I. Taylor, the

said company commenced to make improvements upon said property, by building a dock, store house, tavern, and running sloops to New York, and by selling off lots cheaply to those who would build upon them. And that a number of lots were sold, and have been built upon, and very valuable improvements put upon the same.

And this defendant in further answering says, that the whole amount of bids for choices of the said 16 lots was $82 25, which was appropriated towards building the dock, and other improvements put upon the property; and of the remaining 8 lots one was kept for a tavern to be erected by the company, and the rest kept for sale.

And this defendant in further answering says, that the said John I. Taylor, in pursuance of said bids for choices, on the 21st April, 1830, executed the following deeds to the persons to whom they were struck off, for the amount of land, for the nominal considerations as expressed in said deeds, and recorded in the clerk's office of Monmouth county, in the places hereinafter named, viz:

No.			Book.	Price.
2	I. K. Lippincott	42	W.[2] 36	$50
19	do.	$33\frac{9}{10}$		
7	Leonard Walling	$31\frac{14}{100}$	V.[2] 369	50
13	do.	43		
3	David S. Bray	42	V.[2] 324	50
14	do.	43		
6	John, James, and Primrose Hopping	$31\frac{4}{10}$	V.[2] 276	100
22	do. do.	25		
16	do. do.	86		
17	do. do.			
11	Joseph Taylor	43	V.[2]	50
23	do.	$23\frac{1}{2}$		
4	Ezra Osborn	42	W.[2] 395	50
10	do.	43		

Lot No. 5 is the tavern lot, sold in 1839 to Oliver Vanderbilt. Part of No. 9 was sold to Lewis Morris, on the 5th July, 1834, for $88, containing $17\frac{6}{10}$, recorded G 2, 110, and the rest part of No. 9 was reserved for the tavern lot, and sold with it. No. 12, $\frac{48}{100}$ acre, was sold to Garret Van Doren, on the 16th March, 1832, for $35, and is recorded G 2, 449. Lot 15, of 43, to Samuel Pintard, on the 3d December, 1832, for the nominal sum of $300, which had been verbally sold before and not paid for, and had been built upon before sold to said Pintard, and the $300 was the price of both the lot and the building when sold to Pintard, recorded C 3, 28; and all but $25 thereof went to the person who put the improvement, as this defendant is informed and believes.

No. 18, of 43, was sold on the 29th May, 1832, to Minard Beedle, for $25, recorded A 3, 456. Lot No. 8 was sold on 5th of July, 1834, part of it, $15\frac{8}{100}$ acres to Leonard Walling, for $80, G 3, 115; and part 10 to this defendant for $80. Lot No. 20, $35\frac{8}{10}$ acres, and 24 of 22 acres, to Joseph D. Taylor, on 3d December, 1834, for $200,

recorded H 3, 279. Part of lot No. 1, viz., of 31, was sold to Alfred Walling, 1st April, 1836, for $54, recorded N 3, 60; but what was done with the rest part of said lot this defendant cannot state, the entry of this defendant's name on said plot being a mistake.

And this defendant in further answering says, that the said company, in addition to said 24 lots, made through their attorney, the said John I. Taylor, for portions of said property, deeds to the following persons:

For the following amounts of land, dates, and prices, recorded in the following places, and for greater certainty refer to the deeds themselves, viz:

	A.					
Samuel Sprowl,	15	5th July,	1834,	G 3,	94	$37
Ezekiel Tilton,	34	"	"	"	108	76
Thomas Black,	17	"	"	"	111	22
Joseph Clarck,	17	"	"	"	113	23
John Snyder,	22	"	"	"	117	39
John & James Hopping,	30	"	"	"	165	49
Henry Johnson,	32	"	"	"	167	70
Stephen Stoney,	17	"	"	H 3,	455	25
Isaac T. Walling,	39	"	"	I 3,	518	88
Asher Collins,	17	19th Sept.,	"	H 3,	453	23
Rulif R. Schenck,	63	21st Feb.,	1835,	"	516	80
Solomon Borevelt,	17	26th March,	"	I 3,	81	
William Hoff, jr.,	35	8th March,	1836,	L 3,	372	51

Ezra Osborn, Thomas Arrowsmith, Thomas V. Arrowsmith, John W. and Joseph D. Huff, $3\frac{9}{16}$ part of No. 6, of the 24 lots of survey of 9th April, 1830, which said lot No. 6 had been sold to company by John, James, and Primrose Hopping, for use of tavern.

		April 1st,	1836,			$99
Joseph D. Taylor,	50	March 8th,	"	M 3,	27	156
Alfred Walling,	31	April 1st,	"	N 3,	60	84
Trustees Key Port school,	12	May 2d,	"	Q 3,	484	2
David S. Bray, 32, house and lot,		May 2d,	1837,	R 3,	42	300
Francis Cathell,	30	May 2d,	1837,	R 3,	244	85
Warren Walling,	31	April,	1836,	T 3,	114	80
Catharine Snyder,	34	March 26th,	1839,	W 3,		
				345	house and lot,	25
Trustees Methodist Episcopal Church, 20,						
		August 5th,	1841,	D 4,	145	1

And this defendant in further answering says, that they, the said John I. Taylor, on the 28th of April, 1830, made and executed a deed to the said Lippincott, John Hopping, James Hopping, David S. Bray, Leonard Walling, and Joseph Taylor, for $\frac{1}{4}$ of all said lots, 5, 6, 7, 8, 9, and 10, of the original survey, except the 24 lots of the survey of 9th April, 1830.

And this defendant understood and believes the said Primrose Hopping, although his name was not mentioned in the deed, yet that by an understanding between him and his said brothers, he was interested with them in the proportions of Primrose of $\frac{1}{3}$ of $\frac{1}{4}$, and John and James $\frac{2}{3}$ each of $\frac{1}{4}$.

And this defendant in further answering says, that said premises so conveyed by said John I. Taylor on the 28th April, 1830, remained in common and undivided until some time in the year 1831, when all that portion of it contained within the black lines, marked on the said original map of Leonard Walling, and described in the deed of partition recorded L, B 3, 313, was partitioned off as thereon marked off, and numbered from 1 to 8, inclusive, and which said black lines, and the names of said Lippincott, Osborn, Bray, John I. Taylor, J. and J. Hopping, and Joseph Taylor, were then for the first time marked down on said map, as this defendant is informed and believes, and the deed of partition was formally executed on the first of April, 1832, and recorded in the clerk's office at Freehold, B 3, of deed, folio 313, as by reference will more fully appear.

And this defendant in further answering says, that the balance of said lots were sold off as aforesaid, and conveyed by said John I. Taylor, except the property sold to Oliver Vanderbilt, including the tavern property, and which is described in the deed from the said John Taylor, Isaac K. Lippincott, and others, to Oliver Vanderbilt, dated 25th of February, 1839, and recorded in the clerk's office in Freehold, in book W 3, 144, for the consideration of $7,000. And this defendant in further answering says, that he sold all of lot No. 8, set off to him in the deed of partition of the 21st May, 1832, east of the road laid out in February, 1830, in the year 1831, to Hendrick Van Duyn, for the sum of $250, and all to the west of said road, about the 1st April, 1833, for $454 54, to Joseph Sprowl; and that all the wood that was upon said lot so sold as afordsaid to Van Duyn and Sprowl, when sold by the commissioners, was there yet when sold to Van Duyn and Sprowl, unless, perhaps, a few trees cut and used for building the dock and storehouse built by the company upon the said joint property. And this defendant in further answering says, that he sold lot No. 19 of the twenty-four lots of survey of 9th April, 1830, to Richard Beedle and Lydia Burrowes, in January and February, 1835, for $66, and lot number 2 of said twenty-four lots of survey of 9th April, 1830, to John Lambert, on the ————, 1831, for $40, and the said part of lot number 8, of 10-100 acres, conveyed by John I. Taylor to this defendant, July 5th, 1834, he still retains. And this defendant in further answering says, that he believes in the said partition he got his fair share in value of the said property partitioned. And this defendant in further answering says, that the said company built upon the said lot number 8, commonly known as the fishing-point lot in 1830, a dock and storehouse, at the cost, as near as this defendant has ascertained, of $2,000, and about the year 1832 and 1833, a tavern house and other buildings attached to it, at a cost, as near as this defendant has ascertained,

of $6,000, and all of which said dock, storehouse, and tavern property, was conveyed to said Vanderbilt, April, 1839, for $7,000. And this defendant in further answering says, that but very little wood or timber was cut off of said lots, 5, 6, 7, 8, 9, and 10, until after the partition in 1831 as aforesaid, and what amount was after that cut off of the part partitioned to the others, he is ignorant. And this defendant in further answering says, that, for the purpose of improving said property, the said company, in the summer of eighteen hundred and thirty, built a sloop, as well as the said dock and storehouse, and in 1836 another, and continued to run both as a packet between said Key Port and New York, until they sold out to Oliver Vanderbilt, in 1839, and that a great proportion even of the timber used for the tavern house was got from other sources than the said company's property; and that, as far as this defendant can ascertain, the gross amount of wood cut by the company off of said lots, 5, 6, 7, 8, 9, and 10, did not exceed $358 94, out of which had to come the cutting, carting, and freight, which would reduce the nett amount about one-half. And this defendant in further answering says, the following is a true statement of his account with the said company, and of all receipts from the sale of wood, and timber, and lands, and his repayments out of and concerning the same, so far as regards said lots, 5, 6, 7, 8, 9, and 10, bought as aforesaid of the said commissioners, by which it will be perceived that, not allowing anything for his labor or risk, and notwithstanding the unexpected rise in real estate, and including also the earnings of the sloops in employ of the company, he only received a balance of $312 50, and had it not been for the earnings of the vessels, he would have been considerably the loser by the operation, as this defendant believes.

Statements of payments and receipts by Isaac K. Lippincott with the Key Port company.

1830.			
April 8.	To cash paid on land, first payment - -		$292 70
	" cash paid for laying roads - - -		5 56
		$292 70	
		5 56	
		$298 29	
	Eleven months 20 days interest, to 28th March, 1831 - - -	17 38	
June 2.	To cash paid for choice of lots - - -		21 00
9.	Nine months 26 days interest, to 28th March, 1831 - - -	1 02	
June 11.	To cash paid - - - - -		40 00
	Nine months 17 days interest, to 28th March, 1831 - - -	1 91	
July 7.	To cash paid - - - - -		40 00
	Eight months 21 days interest, to 28th March, 1831 - - -	1 74	

Sep. 23.	To cash paid - - - - -			100 00
	Six months five days interest, to 28th March, 1831 - - -		3 08	
Oct. 2.	Cash paid - - - - -			320 00
	Five months 26 days interest, to 28th March, 1831 - - -		9 39	
Oct. 7.	Two pieces bed ticking - -		15 02	
	19 white pine trees, 50 c. - -		9 50	
	Two oak sticks timber - -		3 91	
				28 43
	Five months 21 days interest, to 28th March, 1831 - - -		81	
1831.				
Jan. 27.	To cash - - - - -			100 00
				$947 69
	Two months 1 day interest, to 28th March, 1831 - - -		1 02	
				36 35
				$984 04
1831. Cr.	By cash received for land sold - -			140 00
				$844 04
Mar. 30.	Dr. To cash paid - - -			73 57
	Ten months 3 days interest, to 3d February, 1832 - - - -		3 71	
April 1.	To cash paid on land -	$292 69		
	" works on roads -	2 75		
				295 44
	Ten months 2 days interest, to 3d February, 1832 - - - -		14 85	
	Ten months 3 days interest on $844 04, 28th March, 183I, to 3d February, 1832 - - - -		42 92	
				61 48
1832.				$1274 53
Feb. 3.	By cash received for land sold - -			150 06
				$1124 47
Aug. 22.	Dr. Cash paid - - -		100 00	
	Expenses paid - - - -		5 75	
				105 75
	Nine months 7 days interest, to 1st April, 1833 -			3 85
	One year, 1 month, 28 days interest on $1124 47, from 3d February, 1832, to 1st April, 1833 -			78 32
				$1312 39

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1833.				
April 1.	Cr. By cash received for land - - -			454 54
				$857 85
July 3.	Dr. To cash paid - - - -			20 00
	Interest thereon to 13th December, 1834, 1 year, 5 months, 10 days - - - -			1 73
1834.				
May 6.	Bill rendered, payments, &c. -		194 97	
"	" " -		11 75	
				206 72
	To 7 months 7 days interest thereon, to 13th December, 1834 - - - -			7 45
Nov. 11.	To bills and cash advanced - - -			121 77
	To 1 month 2 days interest thereon, to 13th December, 1834 - - - -			65
	Interest on $857 85 from 1st April, 1833, to 13th December, 1834, 1 year, 8 months, 12 days - - - - - -			87 54
				$1303 71
1834.				
Dec. 13.	Received for building lots - - -			66 00
				$1237 71
1835.				
July 13.	Seven months interest on $1237 71 - -			43 32
				$1281 03
"	Received - - - - -			75 00
				$1206 03
	One year, 2 months, and 6 days interest on $1206 03, from 13th July, 1835, to 19th September, 1836, is - - - -			85 63
				$1291 66
Sept. 5.	Cash received - - - -		27 17	
	Interest to 19th September, 1836, 1 year, 14 days - - -		1 68	
Nov. 12.	Cash received - - - -		60 00	
	To 10 months 7 days interest, from November 12th, 1835, to 19th September, 1836 - - -		3 07	91 92
1836.				$1199 74
Sept. 19.	Cash paid - - - - -			150 00
				$1349 74

Oct. 10.	To 19 days interest - - - -			4 72
"	To cash paid - - - - -			124 91
				$1479 37
"	By cash received - - - -			43 50
				$1435 87
Nov. 26.	To 1 month 16 days interest - - -			11 00
				$1446 87
"	By cash received - - - -			50 00
				$1396 87
1837.				
April 4.	Interest from 26th November, 1836, is 4 months 8 days - - - - -			29 80
				$1426 67
April 4.	By cash received - - - -			118 10
	Eleven months 28 days interest, to 2d April, 1838,			78 11
				$1386 68
Sep. 11.	By cash received - - -		12 50	
	Six months 21 days, interest to 2d April, 1838 - - - -		41	
1838.				
Jan. 1.	By cash received, - - -		6 50	
	Three months 1 day interest, to 2d April, is - - - -		10	
Jan. 24.	By cash received - - -		27 00	
	Two months 8 days interest - -		30	
April 2.	Cash received - - -		13 63	
				60 44
				$1326 24
	Interest to 28th February, 1839, is 10 months 26 days - - - - -			72 04
				$1398 28
1838.				
May 7.	By cash received, - - -		5 74	
	Nine months 21 days interest, 28 February, 1839 - - -		27	
Oct. 27.	By cash received - - -		30 84	
	Four months 1 day interest, to 28th February, 1839 - - -		62	
Dec. 3.	By cash received - - -		81 00	
	Two months 25 days interest -		1 11	

1839.			
Feb. 25.	By cash received - - -	37 48	
Feb. 28.	Cash rec'd 5 days interest on $37 48 -	02	
		500 00	
			657 12
			$741 16
	One year 1 month 3 days interest to 1st April, 1840, is - - - - -		48 54
			$789 70
Mar. 20.	By cash received - - -	250 00	
	One year 11 months interest, to 1st April, 1840 - - -	15 46	
April 1.	By cash received - -	25 00	
	One year's interest - - -	1 50	
			291 96
			$497 74
	One year's interest - - - -		29 86
1840.			$527 00
April 1.	By cash received - - - -		65 33
1841.			$462 27
April 1.	One year's interest - - - -		27 73
			$490 00
April 1.	By cash received - - - -		802 50
			$312 50

And this defendant in further answering says, that the said commissioners, so far as this defendant knows, and as he verily believes, were nominated and appointed in the due and fair course of legal proceedings, and that all the acts and reports of the said commissioners and of the said orphan's court were in the due and fair course of legal proceedings, so far as he knows and as he verily believes; and this defendant says absolutely, that he did not interfere in any shape or way whatever, either directly or indirectly, with the nomination, appointment, or action of the said commissioners, or with the orders or action of the said orphan's court in relation thereto, nor does he know or believe, that anybody else unlawfully or improperly interfered with the same; and this defendant further says, that he had no agency whatever in procuring or nominating the said commissioners, or in procuring any of the reports of the said commissioners, or any of the orders of said orphan's court in relation thereto, but that they all were carried on without any agency or combination on the part of this defendant, and that he was ignorant

that any proceedings had been had in relation to said property, either as to the partition or sale thereof, until he saw the advertisement of sale as aforesaid.

And this defendant in further answering admits, that he believes that said Edmund Kearny died intestate, about 30th of December, 1822, seized in fee of said Key Grove property, which contains not 960 acres, but only 781, and leaving the said Thomas, Anne, Catharine, Anastasia and Horatio, and their brothers James P. and John Kearny, and their sister Mary Kearny, his only children, heirs at law; but this defendant denies that the greater part of said estate was covered with a large growth of valuable forest trees fit for building, and that a large income might have been realized out of said estate by sales of timber and fuel therefrom; and he further denies that said complainants have been defrauded by cutting or carrying away, or selling, timber or wood from said estate, under pretence of a sale thereof under the order of the orphan's court, in said bill set forth.

And this defendant in further answering admits, that he is informed and believes the said James P. Kearny came of age about the 21st of December, 1822, and on the 9th of December, 1823, mortgaged his interest in said estate to William W. Forman, as in said bill is set forth, and not having paid said debt in April, 1829, sold all his interest in said estate to Daniel Holmes and John W. Holmes, for the sum of $1,600, out of which said $1,600 said mortgage was to be paid, and which said deed has been duly acknowledged and recorded.

And this defendant in further answering admits, that *that* said Key Grove property forms a portion of the shore of Raritan bay; but this dedefendant denies that the local advantage of said estate for a seaport town, in competition with Middletown point, was obvious to this defendant; but whether obvious to intelligent men or not, this defendant submits is a matter of speculation, which this defendant cannot with propriety answer; but this defendant denies that it was easy to foresee, that with no more capital than might be realized from judicious sales of the wood and timber upon it, said estate might be converted into a large and flourishing seaport town; but, on the contrary, this defendant charges that said Key Grove property had formed a portion of the shore, and laid just where it did at the time of said sale for a great many years, and he expects that intelligent men had often overlooked its position in competition with Middletown point, and that said Edmund Kearny had judiciously managed the sales of wood and timber growing thereon, but yet no seaport town ever began to grow there, until it was called into existence by the toil and capital of the defendants in the bill named, and others under them; and this defendant admits that there are now upon said estate a great many houses, stores, and docks, and improvements upon said estate as in said bill is named, and several put up since the commencement of this suit; but he denies that the capital with which they were built was realized from the sales of wood and timber off of said premises; but those built on lots No. 5, 6, 7, 8, 9, and 10,

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were built with the capital of the defendants and those claiming under them, derived entirely from other sources.

And this defendant in further answering admits, that said D. Holmes applied, by petition, for himself and the said John W. Holmes, to said orphan's court, for partition of said estate, in April, 1829; but whether the said Daniel and John Holmes desired it partitioned or sold, or whether they purchased it with an intention of having it divided or not, this defendant is ignorant, but insists that said Holmes had a legal right to buy and to have it sold by commissioners, if it could not be divided without injury to those interested; but that the said Holmes wished it sold for the purpose of its being laid out and improved as a seaport town, this defendant does not believe was ever thought of by either D. or John W. Holmes. And this defendant admits, that upon said application, but without any such aid or co-operation as in said bill is stated, such proceedings were had, that said estate, on the 3d and 4th day of November, were offered for sale, and, as this defendant asserts, was sold to the persons in this behalf in this answer stated; but he expressly denies that, immediately thereafter, wood and timber, far exceeding the purchase money, or to any other amount, was cut and sold from said estate.

And this defendant in further answering admits, that he is informed, and believes, that at the time of said application said John Kearney had died intestate and without issue; and that said Thomas, Anne, Catharine, and Anastasia, were minors, and Joseph Taylor was their guardian; and said Mary E. Kearney was a minor, and John O. Stillwell was her guardian; and that the said Mary died on the 25th of December, 1836, but leaving a will duly executed, as this defendant is informed.

And this defendant in further answering admits, that he believes the said proceedings of the said orphan's court upon said application is correctly copied in said bill from folio 22 to folio 56; but for greater certainty refers to a duly certified copy thereof.

And this defendant in further answering says, that some time after the confirmation of said sale by the orphan's court, in January term, 1830, six of the surveyors of the highways of said county of Monmouth met under an order of the court of common pleas of said county, for the purpose of laying out a public road through said property; and this defendant, and most of those who had become interested in said property, met there at the same time, for the purpose of attending to their interest in the matter, as he submits he had a right to do; but this defendant denies that immediately after the said order of confirmation the said commissioners permitted this defendant, or, to the best of his knowledge and belief, permitted Ezra Osborn, John I. Taylor, Daniel Holmes, David S. Bray, John Hopping, James Hopping, and Leonard Walling, together with Joseph Taylor, assenting to said permission to enter upon lots No. 5, 6, 7, 8, 9, and 10, and then and there to cut down, and carry away, and sell the timber and wood there being, or that they did enter under said permission immediately after said confirmation upon

said lots, and cut and carry away wood and timber of the value of $30,000; nor did this defendant enter or exercise any acts of ownership of said lots 5, 6, 7, 8, 9, and 10; nor did any of the other defendants, so far as this defendant knows or believes, exercise any rights of ownership over said lots 5, 6, 7, 8, 9, and 10, before the deed was delivered to said John I. Taylor, as hereinafter mentioned, unless to see to their interest at the said meeting of said surveyors of the said highways.

And this defendant further states, that no wood or timber was cut or carried away by any person or persons whatsoever on or off said lots 5, 6, 7, 8, 9, and 10, before the delivery of the deed for the same to John I. Taylor, to the knowledge or belief of this defendant, nor was any part of the purchase money of said lots 5, 6, 7, 8, 9, and 10, raised by sales of wood and timber off of said lots, to the knowledge or belief of this defendant.

And this defendant in further answering admits, that on or about the 1st day of April, 1830, under the said orders of said orphan's court, the said commissioners made and executed a deed to the above named John I. Taylor, wherein they recite among other things, as is set forth in said bill from folio 65 to folio 79, but for greater accuracy and true construction of said deed this defendant refers to the deed itself, or a certified copy thereof.

And this defendant in further answering says, that during the time of said sale of lots 5, 6, 7, 8, 9, and 10, on the fourth of November, 1829, he has no recollection of knowing that any person or persons was or were interested in the purchase thereof, except this defendant, the said D. Holmes, Stephens, Burrowes, and Osborn; he left the ground under that belief, except that during the evening after the sale he heard that Horatio Kearny was considered as one of the company, nor did he, to the best of his memory at that time, know or believe that said Holmes had spoken to, or that any body else had agreed or expected to, be interested therein.

And this defendant further states, that at the time of said sale as aforesaid of lots No. 5, 6, 7, 8, 9, and 10, he had not any knowledge, hint, intimation, or belief, that the said commissioners, or any or either of them, had any interest in, or were to be interested in, or had agreed to be part of any company to purchase said lots No. 5, 6, 7, 8, 9, and 10, or any or either of them; nor did he then know or believe that the said commissioners, or either of them, knew that this defendant in company with said Holmes, Burrowes, and Stephens, or any body else, had agreed to bid or buy said lots, or any or either of them, nor does this defendant now believe that the said commissioners, or any or either of them, at the time of said sale, or during the day of said sale, were directly or indirectly interested, or to be interested, in the purchase of said lots, or any or either of them.

And this defendant in further answering says, that his interest in lots 5, 6, 7, 8, 9, and 10, was but a small matter compared with the amount of his interest in lot No. 1, and that he was induced to take an interest in lots No. 5, 6, 8, and 10, chiefly from the representation of said Ste-

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phens and Holmes, after he had bought as aforesaid lot No. 1; and as to lot No. 8, from a perception that it was more for his interest as the owner of lot No. 1, and for the purpose of getting his produce to market, that lot No. 8 should not be in the hands of those who would let it lie idle, and from adverse interest would put no improvements, and allow of no improvements to be put upon it; and then after the purchase of No. 8, was induced as aforesaid on the ground to be interested, as he then thought, with Stephens, Burrowes, Holmes, and Osborn, in 7 and 9, because he had thought to bid for them as aforesaid, and as to 5, 6, and 10, it was merely yielding to the solicitations of Holmes and Osborn.

And this defendant in further answering says, that it was a matter in which he then took very little interest, whether he owned $\frac{1}{4}$, $\frac{1}{5}$, $\frac{1}{6}$, or $\frac{1}{8}$, of said lots 5, 6, 7, 8, 9, and 10, his object in taking an interest being chiefly as aforesaid.

And this defendant in further answering says, that it was with these views and feelings, and with no other knowledge than is above detailed, that he left the sale on the evening of the fourth of November, 1829, to the best of this defendant's memory and belief.

And this defendant in further answering says, that he does not remember any thing further that took place with reference to said lots No. 5, 6, 7, 8, 9, and 10, until the meeting as aforesaid of the surveyors of the highways, about the 28th day of February, 1830, although, so far as this defendant was concerned, he was not unwilling to let in an additional number of enterprising men to have an interest in lots 5, 6, 7, 8, 9, and 10.

And this defendant in further answering says, that he cannot now remember when he first understood that Primrose Hopping and John Hopping had become interested in said purchase of lot No. 8, and considered themselves interested in said joint purchase of lots No. 5, 6, 7, 8, 9, and 10, but whenever it was, this defendant made no objection thereto, and was perfectly willing that they should be so considered.

And this defendant in further answering says, that he had no counsel, or solicitor, or attorney employed to assist him in and about his said purchase, nor ever employed or consulted with any counsel whatever, concerning the Key Grove property, until after this controversy was moved, in the year 1840.

And this defendant in further answering says, that to the best of his memory and belief, that on the day the purchase money was paid to the said commissioners, and the deed delivered to the said John I. Taylor, or a short time before, but the precise time this defendant cannot now remember, it was finally agreed and understood that the interest in said lots 5, 6, 7, 8, 9, and 10, should be divided into 8 shares, of which this defendant was to have one; the said Leonard Walling, one; David S. Bray, one; Joseph Taylor, one; John I. Taylor, one; Ezra Osborn, one; James and John Hopping and Primrose Hopping, $\frac{3}{7}$.

And this defendant understood that said Joseph Taylor came in in the place of Daniel Holmes, the said John I. Taylor in the place of

Richard C. Burrowes, the said David S. Bray in the place [of] Horatio N. Kearny; and, at the solicitation of the rest, Leonard Walling, who was living near by, and a surveyor, came into the place of Septimus Stephens, who had voluntarily backed out, and James Hopping came in with his brothers, Primrose and John.

And this defendant in further answering explicitly says, that neither the said James Hopping, or Leonard Walling, were either directly or indirectly concerned in the purchase of the said lots 5, 6, 7, 8, 9, and 10, or any or either of them, at the time of said sale, on the fourth of November, 1829, to the knowledge or belief of this defendant, nor had he any knowledge, hint, intimation, or belief that they were interested, or thought of becoming interested, until after that period.

And this defendant further states, that he believes he did not know at the time of the said sale, on the fourth November, 1829, that said Primrose Hopping was interested.

And this defendant in further answering says, that he admits it to be true that the said John I. Taylor was not in fact the purchaser on the said fourth of November, 1829; but he insists that, so far as the said commissioners and heirs of Edmund Kearny were concerned, the persons to whom the lots 5, 6, 7, 8, 9, and 10 were respectively struck off, were, in fact, the purchasers for their sole use and benefit, and for such persons as they saw fit to let in; and that the said commissioners and the said heirs have nothing to do, or any interest, in any such private understanding or agreement as might have existed between the said persons to whom the said lots were struck off, and other persons.

And this defendant insists, that the said persons to whom said lots were struck off as aforesaid, after the said lots were so struck off to them, had a right to let in others with them to the benefit of the purchase, either in pursuance of a previous agreement between them; and that, after the lots were so struck off to them, they had a right, both before the confirmation of the sale by the court, and before the delivery of the deeds by the commissioners, to sell out and transfer their right to whom they might see fit; and that the persons to whom they might so transfer do, and ought to, stand, in equity and conscience, in the places of those from whom they bought; and that, if it were otherwise, and no transfer could be made until after confirmation by the court, (which might be two or three months,) it would have a tendency to depreciate the property offered for sale.

And this defendant in further answering admits, that the said deed was not made to the said John I. Taylor for his own sole use and benefit, but for himself and the said Joseph Taylor, Isaac K. Lippincott, Leonard Walling, James Hopping, John Hopping, David S. Bray, and Ezra Osborn, in pursuance of the agreement, and under the circumstances, herein before named; and that the said deed was so made to said John I. Taylor, not to cover any fraud, for this defendant was entirely ignorant and unconscious of any, or of concealing any fact, for that would have been much better effected by making the deeds directly to the persons reported to the court; but for the purpose

of saving the expense of making several deeds in the first place to those reported to the court, and from them to those who were beneficially interested, and to facilitate the making of deeds for lots, as the said John I. Taylor was then a single man. But this defendant says, so far as he was concerned, and he believes so far as the other purchasers were concerned, unconscious of any fraud or illegality, and looking only to the substance of the thing, they thought that having bought the property in perfect good faith, and paid their money for it, they thought a deed from the commissioners to John I. Taylor was as good as if given, in the first place, to the persons reported as purchasers, and by them to those who had bought out their interest.

And this defendant insists and submits, that in equity and conscience, and in this honorable court, this defendant, and the other defendants, should be placed upon the same footing as if the deed had been made to them, and by them to the said John I. Taylor; and that if it had so been done, that the title of this defendant, and of the others interested, when the deed was made to said John I. Taylor, would be good in law and equity, notwithstanding any or all the commissioners had become interested in the property, at any time after it was struck off on the fourth of November, 1829.

And this defendant further insists, that even if the said Leonard Walling and James Hopping, being interested at the date of the deed, makes a technical fraud, yet that that should not affect the right of this defendant, and should only operate so far as their interest was concerned; and that said sale and deed, so far as this defendant is concerned, is without either actual or constructive fraud; and that any irregularity or illegality in making the deed to the person not reported to the court, is caused by the act of the legislature of the State of New Jersey, passed in 1841. And this defendant further insists, that even if said commissioners were interested at the day of the sale, on the fourth November, 1829, yet that it ought to affect the sale only so far as said commissioners were interested.

And this defendant in further answering insists, that the principle that a trustee cannot purchase at his own sale does not apply, unless the commissioners were interested at the time of the actual sale on the fourth of November, 1829; that the object of the rule is to prevent trustees depreciating property for the purpose of buying it themselves, but was not intended to prevent their buying it at any future time.

And this defendant in further answering denies that said conveyance from said commissioners to said John I. Taylor is, and always has been, utterly void, because the same was made fraudulently by the said commissioners for the use and benefit of the said commissioners and others; but submits, that in contemplation of law, tha tin as much as the said deed was made to said John I. Taylor, at the request of the persons reported to the court as purchasers, that the said deed was made to said John I. Taylor for the use and benefit of those who were reported to the court as purchasers, and who were interested at the time of the sale, on the fourth November, 1829; and that it was not, in con-

templation of law, for the use and benefit of the said commissioners, unless they were interested at the time it was struck off, on the fourth of November, 1829, and then only void, if void at all, only so far as regards the interest of the said commissioners.

And this defendant in further answering admits, that after the delivery of the deed to John I. Taylor, on the 8th of April, 1830, this defendant, and the others then interested, entered upon said lots 5, 6, 7, 8, 9, and 10, and used the same as their own; and he admits that they cut and carried off from said lots wood and timber as they thought proper; but denies that they cut or sold any to raise the purchase money, or any part thereof, either from said lots 5, 6, 7, 8, 9, and 10, or any other part of said Key Grove property; and he further denies that they received therefrom the sum of $30,000, or any other considerable amount.

And this defendant in further answering says, he does not know the ages of the said complainants, or whether the said Horatio, at the time of said sale, was wholly unaccustomed to all matters of business; nor does he know what confidence he was accustomed to place in the said Joseph Taylor; but he expressly charges the truth to be, that the said Horatio was fully aware of all the proceedings, and was in fact one of the persons originally interested in the purchase of lots number 5, 6, 7, 8, 9, and 10, and, together with the said Daniel Holmes, was mainly instrumental in getting up the company who were originally interested in said purchase, and that his object was to make the property bring as much as possible, and that if this suit is carried on with his approbation, he is taking advantage of his own wrong; but this defendant expressly charges that the name of said Horatio is fraudulently used in this suit, not only without his knowledge, but against his consent.

And this defendant in further answering admits, that said Horatio did believe at the time that all the proceedings were correct and legal, without covin or fraud, and this defendant charges that he believes so yet, and he further admits, that there was no intent on the part of said Horatio to defraud his sisters and brother, and that he did not ever know of any fraud, covin, or unfairness of any of said commissioners, guardian, or reputed purchasers.

And this defendant in further answering admits it to be true, that the other complainants were not of age at the time of said sale, but what knowledge they had of the proceedings this defendant is ignorant.

And this defendant in further answering admits, that an action of ejectment is pending in the circuit court of the United States, for this district, in favor of said complainants, to recover possession of a part of said lot number 8, against C. Vanderbilt, a grantee of said John I. Taylor.

And this defendant in further answering admits, that in the winter of 1840–1841, on behalf of himself and the other persons interested in said lots 5, 6, 7, 8, 9, and 10, he applied to the legislature of New Jersey for the act in said bill set forth; but he denies that he represented to said legislature that the said deed from the commissioners to John I.

Taylor was utterly void, and he admits that the legislature passed the said act, which is truly copied in said bill from folio 98 to folio 103, but for greater certainty this defendant refers to the authentic record thereof.

And this defendant in further answering says, that so far as he knows, and as he verily believes, the lands and real estate in said deed to John I. Taylor from said commissioners were sold fairly and without fraud, and that said deed or conveyance was made and executed in good faith, and for a sufficient consideration, and with the consent of the respective persons reported to the court as the purchaser or purchasers.

And this defendant submits, that it is apparent upon the face of the act, that when the legislature speaks of lands sold fairly, and without fraud, it has reference to the time of sale, and not to the time the deed is executed, and intends to embrace all cases where the actual sale, that is, the crying and striking off, has been fair and without fraud, and that the said sale of lots No. 5, 6, 7, 8, 9, and 10, was without actual fraud; and if without either of the commissioners being interested at that time, as this defendant insists, was without legal fraud; and that if the land was struck off fairly and without fraud, let who might be interested at the time the deed was made, provided the purchase money was paid, the deed would be made and executed in good faith.

And this defendant submits, that the legislature did not by said act intend to give any construction to the case of Den against Lambert, referred to in said bill.

And this defendant in further answering submits, that the proceedings of said orphan's court were legal, valid, and binding, and cannot be drawn in question in this suit.

And this defendant in further answering denies, that said Leonard Walling, and James Hopping, and Joseph Taylor, were unfairly, and fraudulently, and under concealment, the purchasers of said lands; but, on the contrary, he charges the truth to be, and as he verily believes, they were not at all interested in the land until after its confirmation by the court, and that the said commissioners reported truly to the court the names of the purchasers, so far as they, the said commissioners, were concerned; that the commissioners had no right to inquire beyond their bid, nor to institute an inquisition to see who were interested with the persons to whom it was struck off. If the property was fairly struck off to a responsible bidder, the commissioners, as this defendant submits, could look no further.

And this defendant in further answering submits that the said deed from said commissioners to said John I. Taylor is not null and void.

And this defendant in further answering, submits, under the circumstances, that said Burrowes, Lippincott, and Osborn were the purchasers of said lots, No. 5, 6, 7, 8, 9, and 10, with an understanding, however, with certain other persons herein before named, not including either the said James Hopping, Joseph Taylor, or Leonard Walling, who were not interested at the time of the sale, but came in at a future time; and this defendant submits, that the said commissioners do not

say on their oath in their said deed to John I. Taylor, that said Bray, Burrowes, and Lippincott were not the purchasers, but John I Taylor.

And this defendant in further answering says, that so far as he is informed and believes, Ezra Osborn has never admitted in writing or otherwise, on the 6th day of May, 1840, or at any other time, that himself, Leonard Walling, Joseph Taylor, John I. Taylor, David S. Bray, John Hopping, James Hopping, and this defendant, made up a company to purchase said lots 5, 6, 7, 8, 9, and 10, and that he purchased jointly for all of said persons with himself, and that no other persons were allowed to purchase said lots, and if said Osborn did make said statement, that the same *are* untrue in point of fact.

And this defendant in further answering says, that he denies that he has admitted at several times, or at any time, in writing or otherwise, that said commissioners were interested in said sale of said lots at said pretended sale, and this defendant expressly denies that the said commissioners, or either or any of them, and the said guardian, either directly or indirectly, combined with this defendant and others to purchase said lots in the names of said Bray, Osborn, Burrowes, and Lippincott, or any or either of them.

And this defendant in further answering says, that he denies that the said commissioners and guardian permitted all the purchasers of all the said real estate to enter thereupon, and to cut and sell the wood and timber therefrom, without giving security, or paying any portion of the purchase money, and only on a parol or verbal agreement, that they would respectively pay to the said John I. Taylor the proceeds of said sale; and he denies that said Taylor did receive the same from the said commissioners, and the other defendants named in said bill, and pay over any moneys to them whatever, arising from any sale of timber from said premises for the purchase money of said several portions of said estate.

And he further denies that the amount so received by him for the said commissioners and the defendant in this suit, greatly exceeded the purchase money.

And this defendant expressly denies, that any permission whatever was given, or any conditions of sale were so extended, to the purchasers of other lots of said estate, the better to conceal any fraud of said commissioners and the other defendants, or in order to secure the greater facility in managing the lots, No. 5, 6, 7, 8, 9, and 10, and laying out the streets and lots, and erecting wharves upon the shore.

And this defendant further answering says, that he presumes that the time when the said Anastasia, Ann, and Catharine, came of age is correctly stated in said bill, but for greater certainty leaves them to make such proof thereof as they may be advised.

And this defendant in further answering says, that the said commissioners did prepare, adopt, and make known, in a public manner, previous to the offer of said real estate for sale, the time and real conditions of the sale purposed, and the same was publicly put up, and proclaimed at the day of sale, and that every person present, who felt an interest,

knew them, and that there were no conditions whatever of said sale, to the best knowledge and belief of this defendant, except those publicly put up and proclaimed to the people present, and which was as herein before stated.

And this defendant expressly denies that the true and real conditions of the sale were as follows, viz., that the purchasers of lots No. 5, 6, 7, 8, 9, and 10, and all the other lots of said real estate, should have a right to enter forthwith after the auction upon said lands, that is to say, upon the lots of which they should respectively appear to be the purchasers, and then and there have right to cut down, and carry away, and sell all the timber, and fuel and wood there growing, and thereby raise and provide the purchase money for their said several and respective lots, and therewith to pay the said commissioners the said purchase money of the lots respectively; provided, always, that the persons who should appear to be the purchasers, and be recognised as such by said commissioners, should be approved of as such by said commissioners, or by them and their associates.

And this defendant expressly states, that all the conditicns of sale, of every kind and description, were made known and published as aforesaid; and this defendant expressly avers, that the conditions and all the conditions of sale were made and published in the manner in which such sales and conditions are usually in such cases in the State of New Jersey.

And this defendant denies, that the said property was sacrificed at said sale, but, on the contrary, he avers that the said property brought its full value, and more than it was thought it would then bring; and he denies most explicitly, that said sale was unlawfully contrived, and intended for the gain of the said commissioners and the defendants, and to cheat and defraud the complainants of the proceeds of the sale of the said timber and wood.

And this defendant in further answering says, that it never has been the custom in the county of Monmouth, upon such sales, to publish the conditions before the day of sale, and then to publish them otherwise than was done in this case, and that in the opinion of this defendant even if the conditions had been published in the newspapers and in handbills as the fact of the sale was, it would not have added any thing to the competition or enhanced the price of said property.

And this defendant expressly denies, that the terms and conditions of the sale were kept private, in order to prevent competition, and to secure the lands at low prices to the favored few mentioned in said bill, or for any other purpose whatever.

And this defendant in further answering says, that he has no knowledge whether the said Leonard Walling, some time before the vendue aforesaid, said that lot No. 8 would be a good place to build a dock, and a company ought to be formed to build a town and have a packet, or not; but even if he did, this defendant submits it only went to show the said Walling's anxiety that the capacity of the plan should be fully

known, and to make the property sell for as much as possible, and that he did not wish secretly to purchase it himself.

And this defendant in further answering says, that he is ignorant what, if any, connexion Thomas Carhart, Amos Walling, Joseph B. Walling, and William Walling, and Thomas I. Walling, were to said Leonard Walling; but even if they were connexions to said Leonard, this defendant submits, that it ought not to throw suspicion on said sale, as the said commissioners were the most respectable and extensively connected individuals in that part of the county, and their connexions could not have excluded from said sale without depriving a very large proportion of the most responsible citizens in that vicinity of bidding.

And this defendant in further answering says, that said Joseph Taylor, at the time of said sale, had no interest whatever in it, directly or indirectly, except so far as to make the property bring as much as possible for the said complainants, and that said Joseph Taylor became interested some time in February, as this defendant is informed and believes, by purchasing D. Holmes's interest in said lots 5, 6, 7, 8, 9, and 10, for $40 advance, and that the said John I. Taylor had no interest in the sale at the time thereof, on the 4th November, 1829, but came in afterwards by some understanding with Richard C. Burrowes.

And this defendant in further answering says, he is ignorant what connexion, if any, said James Sprowl and the other Sprowls are to Joseph Taylor's wife.

And this defendant in further answering says, he admits that he is no connexion of the said commissioners or guardian, or of any or of either of them, and that he is no relation or connexion, as far as he knows, of any person connected with said sale, and whether the said Horatio was, he is ignorant; and he is ignorant whether all the persons who appeared as purchasers of said land were connexions of said commissioners and guardians.

And this defendant in further answering says, that he is entirely ignorant of what wood said Horatio might have cut off of lot No. 15, and leaves him to prove it as he may be advised, but he expressly avers that said Horatio was not kept in ignorance of the formation of a company, such as is herein before set forth; and this defendant expressly avers, that so far from this being the case, said Horatio was himself one of the company, as this defendant afterwards understood, and that said Horatio afterwards sold out to said Bray for $40 advance; and this defendant charges the truth to be that the said Horatio at that time was fully cognizant of all the facts, and this defendant admits that said Horatio then believed all fair. And this defendant states, that he has been informed that said obligations in said bill, purporting to be made on behalf of said Horatio, are made without said Horatio's knowledge or approbation.

And this defendant in further answering expressly denies, that said sale or any part thereof was or were managed unfairly and fraudulent-

ly, to obtain that part of said land which might be afterwards sold for building lots or other improvements, and which might be paid for out of the proceeds of the timber and wood which might be cut from the whole of said lots 5, 6, 7, 8, 9, and 10; and this defendant further denies that, to conceal the better their designs, the said commissioners extended to the purchasers of any lots the benefit of said terms and conditions, making known those terms only to the persons whom they were willing to admit as purchasers, so that the plan of the seaport intended could be carried into effect without opposition.

And this defendant in further answering says, that he is ignorant whether the said Daniel Holmes immediately, after making his said purchase from the said James P. Kearny, communicated to said Joseph Taylor any purpose of obtaining an order for the sale of the whole of said real estate, but submits that even if he did communicate any such resolutions, it was no more than his right and duty to do, and this defendant is wholly ignorant of what said Joseph Taylor may have said upon the subject.

But this defendant expressly denies, positively so far as he is concerned, and to the best of his knowledge and belief, so far as the others are concerned, that the said David Holmes, Joseph Taylor, James Hopping, and Leonard Walling, and Edward Taylor, with the assent and fraudulent collusion of said Joseph Taylor, adopted and carried into effect, together with the said John I. Taylor, Ezra Osborn, John Hopping, and Isaac K. Lippincott, or any of them, the sales of said lands, and realized large proceeds from the sale of timber and wood cut therefrom.

And this defendant in further answering says, that previous to the commencement of this suit he had sold out all his interest to any part of said Key Grove property, and at the commencement of this suit had not, and never since has had, any right, title, or possession of any part of said Key Grove property, except two building lots and one-twelfth of the dock at Lockport, and he submits, so far as he is concerned, this suit should be dismissed with costs.

And this defendant in further answering admits, that the heirs of said Leonard Walling still own and have title to a portion of said Key Grove property.

And this defendant in further answering says, that he is ignorant with what purpose said D. Holmes purchased the interest of James P. Kearny, but he denies that, to the best of his knowledge, information, and belief, that said D. Holmes purchased with a view to force a sale of said property, so that a company of persons which he should form might purchase the part of said estate which could be most conveniently laid off into lots for building, and converted into a seaport town, thereby to realize a profit in the way of speculation. And he also is informed, and believes, that said Holmes sold to said Joseph Taylor afterwards, not because he found out that said sale was illegal, but because said Holmes induced this defendant and the others who were engaged in purchase of lots No. 5, 6, 7, 8, 9, and 10, originally, only for the purpose of creating competition and enhancing the price of the

property, and having thus gained his object, sold out at the first good offer for the advance of $40.

And this defendant in further answering admits, that the said Daniel Holmes, although he has the same right as the complainants, will not concur in filing this bill, upon the ground, truly stated by him, that the said commissioners made the sale fairly and without fraud, and that the purchase money received by the commissioners for the whole estate, and for each and every part thereof, was fully equal to the full value of said estate.

And this defendant admits the death of John W. Holmes, and that his heirs will not consent to be parties to this suit.

And this defendant in further answering says, that to the best of this defendant's knowledge and belief the quantity of land of said estate is truly stated in said map of Leonard Walling, and the quantity in each lot is therein truly stated.

And this defendant in further answering admits a power of attorney from himself and James Hopping, John Hopping, Ezra Osborn, David S. Bray, and Joseph Taylor, to John I. Taylor, but for its contents, date, and recitals, they beg leave to refer to the said power of attorney, or a certified copy thereof, which said power is recorded in the clerk's office, of the county of Monmouth, at Freehold, and that said John I. Taylor did convey divers portions of said lands to different persons as herein before set forth.

And this defendant in further answering admits, that the said constituents and John I. Taylor executed a deed of partition, but for what were the contents and construction of said last mentioned deed this defendant refers to the deed itself, or to a certified copy thereof, which deed is also recorded in the clerk's office of the said county of Monmouth.

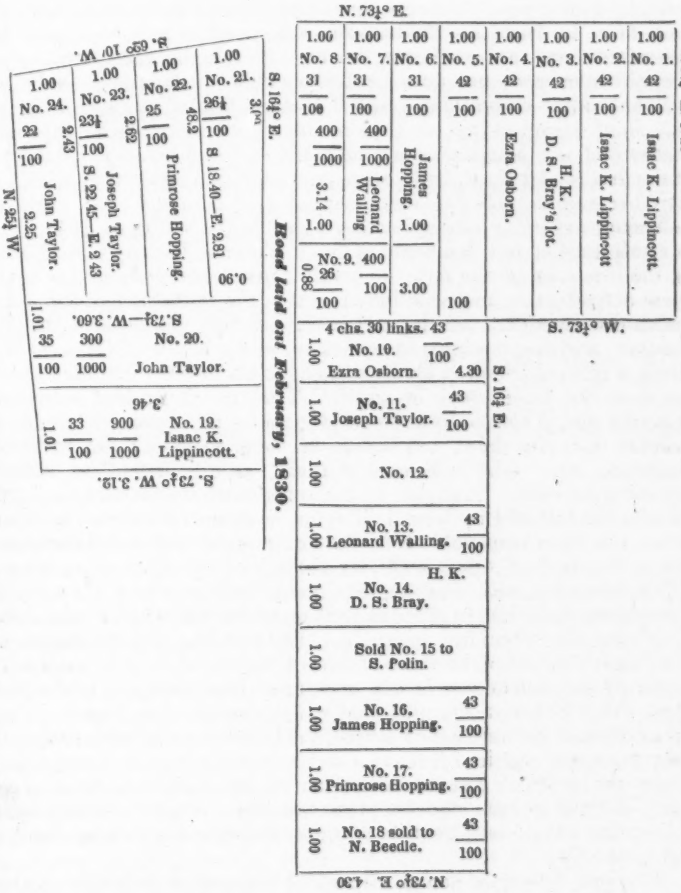
And this defendant in further answering says, that he has never threatened to lay waste the said real estate, or to destroy the buildings and constructions or improvements upon the same, nor does he know that any of the other defendants threatened so to do. Nor does this defendant know that the complainants have been deterred from making inquiries, and ascertaining who are the occupants of the several parcels, by threats of violence, or otherwise.

And this defendant in further answering says, that he believes the said original map of Leonard Walling does include the shore to low-water mark, and that it was kept by him for convenience and reference.

And this defendant in further answering says, that he does not know what quantity of wood was cut off of any lots, except 5, 6, 7, 8, 9, and 10, except a partial amount of what was cut off of No. 1 on the original map, except as herein before stated.

And this defendant in further answering says, that at the time of said sale, on the 3d and 4th of November, 1829, he had no knowledge or thought whether the commissioners and guardian might lawfully be interested in said purchase or not.

MAP *of twenty-four lots of land near the fishing point on the easterly side of Brown's Point Cove, surveyed April* 9, 1830, *and laid down on a scale of two chains to an inch, by Leonard Walling. The place was given the name of Key Port in the spring of* 1831.



And this defendant in further answering says, he has no knowledge that said John I Taylor sold any wood off of said company's lots to the glass works at Jersey City.

And this defendant in further answering says, that he had no knowledge, intimation, or suspicion, that there was any defect in the title of this defendant and his associates to said original lots, 5, 6, 7, 8, 9, and 10, until about the time this matter was moved, and a printed copy of George Sullivan's opinion, hereunto annexed, circulated among the tenants. And that, taking counsel upon the subject of P. Vredenburgh, jr., this defendant drew up a statement for the purpose of submitting it for further advice to Isaac H. Williamson, esq., and in said statement this defendant stated, as he believes, that after the sale the said commissioners became interested, nor does he believe that his language there will bear any other construction, and if it does, that it was not what this defendant meant to say; that he meant to say there, as he says now, that two of said commissioners, after the sale and before the execution of the deed of 1st April, 1830, were interested, but how, or at what time they became so, this defendant cannot with certainty say. And this defendant in further answering says, that in the spring of 1841 it had been represented to this defendant that if Thomas Kearny was informed of the true state of the facts he would cause legal proceedings against these defendants to be discontinued, and in the confidence of these statements this defendant left the said statement and opinion of I. H. Williamson, and the statement of witnesses, in the hands of Caleb O. Halstead, a mutual friend, with instructions to let the said Thomas Kearny see them for the purpose aforesaid. That this defendant is informed that the said Thomas took the said papers and statement under the promise to return them, but instead of doing so gave them to George Sullivan, esq., who still retains them, as this defendant submits, against good faith. And this defendant in further answering says, that besides the lots sold by John I. Taylor, as agent for the said company, some lots have been sold off of the parts partitioned off as aforesaid, under the deed of April, 1832, by the persons to whom they were set off as aforesaid; and that a great many buildings and valuable improvements have been made, as well upon the lots sold by said John I. Taylor as the others last mentioned, and that buildings to the number [of] about 50, and of the value of about $50,000, have been put upon the same by the defendants in this suit, and those claiming under them. And this defendant submits, that if the said deed to John I. Taylor from the said commissioners is void, yet that the complainants ought to pay back the purchase money, and the value of the improvements upon the same. But this defendant insists that said deed is good and effectual in law, and he prays that it may be so decreed by this honorable court, and the title of these defendants declared valid and set at rest.

And this defendant denies all and all manner of unlawful combination and confederacy in the said complainants' bill charged against him, without that there is any other matter or thing in the complainants'

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said bill of complaint contained, material or effectual for this defendant to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor and of counsel with the said defendant.

THE UNITED STATES OF AMERICA,
District of New Jersey, to wit:

Isaac K. Lippincott, of the county of Monmouth, in said district, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed according to law, on his solemn affirmation saith, that the matters, facts, and things set forth in the foregoing answer, so far as they are stated as of or relate to his own knowledge, acts, and deeds, are true, and so far as they are stated upon the information of, or relate to the acts and deeds of others, he believes them to be true.

ISAAC K. LIPPINCOTT.

Affirmed and subscribed before me, one of the commissioners, &c., in said court, this 2d day of May, 1843.

DANIEL B. RYALL,
Commissioner for taking affidavits, &c.

Circuit court of the United States of America, for the district of New Jersey.

JOHN I. TAYLOR and others, }
vs.
THOMAS KEARNY and others. }

The answer of Edward Taylor to the amended bill of complaint of Thomas Kearny, Anne E. Kearny, Catharine Kearny, George C. Thomas and Anastasia, his wife, and Horatio N. Kearny, against them, the said John I. Taylor, Edward Taylor, and others, defendants.

This defendant, now and at all times, saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, untruths, deficiencies, and other imperfections within said bill of complaint contained, for a full and perfect answer thereunto, or to so much and such parts thereof as he advised it is material or at all necessary for him to answer, answering, says: That he knows nothing in relation to the partition and sale of the said Key Grove property, prior to the notice given him, that he had been appointed one of the commissioners by the said orphan's court, nor had he any previous intimation that he would be so appointed, nor does he know how he happened to be so appointed, and that he thereupon took upon himself the duty thereof, and took and sub-

scribed the oath prescribed by law; and that he did not at that time, or at any other time before or since, combine with any person or persons whatever to procure a sale of said Key Grove property, nor does he know or believe, nor until the reading of the complainants' bill had he ever heard, that there was or had been any such combination among any persons whatever. And this defendant in further answering says, that in pursuance of said appointment, he and the other commissioners attended upon said land from time to time, and surveyed the same, and, after due reflection and consultation, came unanimously to the opinion that the said premises were so circumstanced that a division thereof could not be made without great prejudice to the interest of the owners, and, in conformity with said opinion, reported so to the court. And this defendant in further answering says, that so far as he is concerned, and he believes so far as the other commissioners were concerned, such report was the honest result of a consideration of the circumstances of said estate, and that this defendant is still of the same opinion that said estate could not have been divided without great prejudice to the interest of the owners. And this defendant in further answering says, that he never was interested, in any way whatever, either directly or indirectly, in the purchase of any part of said Key Grove property, and that his only object throughout was to act fairly in his trust as a commissioner, and, so far as this defendant knows and believes, such was the only object of the other commissioners. And this defendant in further answering says, that so far as he knows, and as he verily believes, neither of the said commissioners were in any way interested in the purchase of any part of said Key Grove property at the time it was sold by the said commissioners, on the 3d and 4th November, 1829. And this defendant in further answering says, that he and the other commissioners attended both days of sale, on the 3d and 4th November, 1829, and that, so far as this defendant is concerned, he says positively, and so far as the other commissioners were concerned, he believes, that the only object of the commissioners at said sale was to make the property bring the highest possible price, and that the said commissioners labored assiduously to bring about that object. And this defendant in further answering says, that said property, and every part and parcel thereof, was put up and sold fairly, and without fraud, and to the highest bidder.

And this defendant in further answering says, that Isaac K. Lippincott, Richard C. Burrowes, and Ezra Osborn were the only persons known to this defendant, on the 3d and 4th of November, 1829, as the purchasers of lots 5, 6, 7, 8, 9, and 10, and that they were the only persons who signed the conditions of sale, and liable to the commissioners for the purchase money, and that they were amply able to meet the same.

And this defendant in further answering, so far as he himself is concerned, expressly denies, and so far as the other commissioners are concerned, to the best of his knowledge and belief, denies, that the said commissioners, or any or either of them, before the delivery of the

deed from the commissioners to John I. Taylor, gave permission to the purchasers, or any or either of them, of any part of said property, to enter upon the same and cut and carry away wood and timber from off the same, to any amount whatever. And this defendant in further answering, expressly, to the best of his knowledge and belief, denies that James Hopping, Leonard Walling, and Joseph Taylor were unfairly and fraudulently, and under concealment, the purchasers of lots 5, 6, 7, 8, 9, and 10, together with John I. Taylor, Ezra Osborn, John Hopping, David S. Bray, and Isaac K. Lippincott.

And this defendant in further answering says, that he was totally unaware that there was any informality or illegality in the proceedings of the said commissioners, until after the suits in ejectment commenced in relation to this matter, in 1840, when he was for the first time made aware that any question could be raised in relation to it, nor was he aware before, that the report of sales made by the commissioners was otherwise than is usual in such cases. And this defendant in further answering, for himself, positively says, and so far as the other commissioners are concerned, to the best of his knowledge and belief, says, that it was the object, wish, and intention of the commissioners in their said report of sales to the orphan's court, to report the same truly, and that said report should show upon its face absolutely, that the said lots were sold to the persons and at the prices therein reported, and this defendant submits that such is its fair construction. And this defendant in further answering says, that the said commissioners were not men skilled in the law, and that they acted without legal advice throughout the whole matter, and that if said report of sales does not show upon its face sales to the persons reported respectively, it arose from inadvertence, and not from design.

And this defendant in further answering says, so far as he is concerned, positively, and so far as the other commissioners were concerned, to the best of his knowledge and belief, that it was the intention of said commissioners, in and by said report of sales, to report to said court that Isaac K. Lippincott, Richard C. Burrowes, and Ezra Osborn were the purchasers of said lots 5, 6, 7, 8, 9, and 10, respectively. And this defendant expressly denies that the said commissioners were advised, and determined to report, not that said Osborn, Lippincott, and Burrowes were the purchasers of said lands or real estate, number 5, 6, 7, 8, 9, and 10, but that said commissioners had exposed said real estate to sale, to avoid the crime and prosecution of perjury, or for any other illegal or improper purpose whatever, but on the contrary thereof, the said commissioners intended, in and by their said report, to report to the court that said Osborn, and Lippincott, and Burrowes were the purchasers, and supposed they had used language sufficiently broad for that purpose. And this defendant here again reasserts, and says that, in point of fact, lot number 5 was struck off and sold to Ezra Osborn; also lots number 6 and 10, and lots number 7 and 9 struck off and sold to Isaac K. Lippincott, and lot number 8, to Richard C. Burrowes, and that at that time they were the only persons known to the com-

missioners as the purchasers, except what they may have heard from rumor, and he submits that in point of fact, and in contemplation of law, whatever might have been the understanding between the said Burrowes, Lippincott, and Osborn, and third persons, other than the commissioners, as between the commissioners and the complainants, and the said Osborn, Lippincott, and Burrowes, the said Lippincott, Osborn, and Burrowes were the only purchasers, and that it was the duty of the commissioners, as it was their intention, to report them to the court as purchasers.

And this defendant denies that said report is fraudulent or evasive in any respect whatever.

And this defendant in further answering says, he was not present in court when the said report of sales were presented to the court, and does not know what took place on that occasion, neither was he present in court when the report that the land could not be divided was presented to the court, and the order of sale made, nor does he know what took place on those occasions, but has always understood and believed, that every thing was fairly and legally done.

And this defendant in further answering says, that the said commissioners made use of every means which honorable men could do, to make said property bring as much as possible, by advertising the sale thereof, not only as extensively as the law required, but much more so, by printed handbills, and publishing it for several weeks in two newspapers in the city of New York, and describing its advantages in the strongest light, and by so laying it off into lots, so as to sell to the best advantage, and in every other way they could devise, and that in consequence thereof said property brought more than it otherwise would have done, more than it was then generally thought to be worth, and more then than it would now bring, as this defendant believes, if in the same situation as it was then in.

And this defendant in further answering denies, that said commissioners and guardian permitted the purchasers to enter upon said land, and cut down the wood and timber, without giving security, and out of the proceeds to pay the purchase money, or any part thereof.

And this defendant in further answering expressly denies, that said permission was so given, and such terms and conditions of sale were so extended to the purchasers of other lots, than 5, 6, 7, 8, 9, and 10, the better to conceal the fraud of said commissioners, and to secure greater facility in managing lots so numbered.

And this defendant in further answering says, that the conditions of sale were put up, and proclaimed to the people present, before the commencement of the sale, and was posted up during the whole sale, in a conspicuous position, accessible to all, which is the usual way in the part of the country where said sale took place; and this defendant denies, that the property was sacrificed by said conditions not being made more extensively known than they were made.

And this defendant in further answering denies, that the true and real conditions of said sale were as follows, viz., that the purchasers of lots

No. 5, 6, 7, 8, 9, and 10, and all the other lots, should have right to enter forthwith after the auction, upon the lots of which they should respectively appear to be the purchasers, and then and there have right to cut down, and carry away, and sell, all the timber and wood there growing, and thereby raise and provide the purchase money, or price of their respective lots, and therewith pay the commissioners, provided that the persons who should appear to be the purchasers, and be recognised as such by the said commissioners, should be approved of by said commissioners, or by them and the said Joseph Taylor, John I. Taylor, Ezra Osborn, John Hopping, David S. Bray, and Isaac K. Lippincott. And this defendant expressly denies that any such conditions existed in any shape whatever; on the contrary, he avers that he has read that part of the answer of Isaac K. Lippincott relating to the conditions of sale, and that, according to the best of his knowledge, memory, and belief, they contain the true and only conditions of said sale. And this defendant expressly says, that there were no other conditions except those which were publicly promulgated and known alike to all.

And this defendant, in further answering, denies that the whole sale of said real estate, or any part of it, was managed unfairly and fraudulently to obtain that part of said land which might be afterwards resold for building lots and other improvements, and which might be paid for out of the proceeds of the timber and wood cut off of lots 5, 6, 7, 8, 9, and 10; and this defendant further denies that they extended, to the purchasers of any of the lots, any terms or conditions other than those publicly put up and proclaimed, and which are correctly stated in the answer of Isaac K. Lippincott.

And this defendant in further answering says, he is ignorant whether the said Daniel Holmes, immediately upon making his purchase of James P. Kearny, had any purpose of procuring a sale of said real estate, or communicated any such purpose to said Joseph Taylor, or whether said Joseph Taylor gave any such assent; but he expressly denies that, thereafterwards, the said Joseph Taylor, and James Hopping, and Leonard Walling, and this defendant, with the assent and fraudulent collusion of said Joseph Taylor, adopted and carried into effect, together with John I. Taylor, Ezra Osborn, John Hopping, or some of them, the said sales, and realized large or any proceeds from the sales of the timber and wood cut from the same. And this defendant in further answering for himself says, that he never owned or was interested in any part of said Key Grove property, or in the wood and timber growing or cut off the same, or any part thereof.

And this defendant in further answering says, that the map made by Leonard Walling contains the true amount and description of said property down to low-water mark, according to the best of his knowledge and belief.

And this defendant in further answering says, that the said lots 5, 6, 7, 8, 9, and 10, and all the rest of said Key Grove property which was sold by the said commissioners, were sold fairly and without fraud, and the whole of the purchase money received by commissioners; and

the deed or conveyance to the said John I. Taylor, from the said commissioners, for lots 5, 6, 7, 8, 9, and 10, and all the other deeds or conveyances from the said commissioners for the other parts of said Key Grove property, was and were made and executed in good faith, and for a sufficient consideration, and with the consent of the said Isaac K. Lippincott, Ezra Osborn, and Richard C. Burrowes, so far as lots 5, 6, 7, 8, 9, and 10 are concerned, and with the consent of the respective persons reported to the court as the purchasers, so far as other portions of said Key Grove property are concerned.

And this defendant in further answering says, that the deed from the commissioners for lots 5, 6, 7, 8, 9, and 10, was executed to the said John I. Taylor, not to perpetrate or conceal any fraud, or to conceal any fact whatever, but because the said Osborn, Lippincott, and Burrowes requested it so to be done, and because all persons then interested in the land wished it so to be done; and for the convenience of such persons, so far as John I. Taylor was concerned, and for the purpose of saving a multiplicity of deeds, the said commissioners not being skilled in the law, or acting under the advice of counsel, and looking only to the substance of the thing, and not aware that it could in law or justice make any difference whether the commissioners made three several deeds to Lippincott, Osborn, and Burrowes, and they then made deeds to John I. Taylor, or whether they saved all parties the expense and trouble of these several conveyances by one deed directly from the commissioners to John I. Taylor, except that it would be acting more in the spirit of their duty to save the estate of Edward Kearny the expense of three deeds when one would suffice.

And this defendant in further answering says, that it is recited, in said deed from the commissioners to John I. Taylor, that E. Osborn, Lippincott, and Burrowes, for and in behalf of said John I. Taylor, did bid the sum of $4,683 16¼, and that it was struck off to said Osborn, Lippincott, and Burrowes, for and in behalf of said John I. Taylor, not because such was the fact, or to conceal any fact, or to perpetrate any fraud, but to give greater formality and consistency to the record, which this defendant then believed, and still believes, the said commissioners could properly and innocently do.

And this defendant in further answering says, that the whole of the purchase money of lots 5, 6, 7, 8, 9, and 10, was paid about the time it became due, by the purchasers, or others in their behalf, to the said commissioners, not out of the wood and timber cut off the same, or from the sale of lots, but out of the other resources and capital of the purchasers, and the same was received by the said commissioners; and, also, that all the purchase money of the residue of said Key Grove property was paid by the respective purchasers about the time it became due; and so much of the whole purchase money of said estate as the complainants were entitled to, after deducting expenses of sale, were paid by the said commissioners to the said complainants, or their guardians, and has come to the hands of the complainants, and been used and enjoyed by them, and still is used and enjoyed by them.

And this defendant denies that the said sale to said Lippincott, Osborn, and Burrowes, and the said John I. Taylor, is void, but submits that the said sale and deed is good and effectual in law.

And this defendant in further answering says, that at the time the deed to said John I. Taylor from the commissioners was executed, that the said deed was not for the sole use of John I. Taylor, but for his use and the use of those who were then, by verbal understandings among themselves, the owners; but whether the said James Hopping, Leonard Walling, and Joseph Taylor were then considered as part owners, this defendant does not remember; but which said James Hopping, Leonard Walling, and Joseph Taylor were no way interested therein at the time of the sale, on the 3d and 4th November, 1829, but they did subsequently to that time, by some arrangement with the original purchasers, become interested; but when, or in what manner, this defendant cannot state; and this defendant in further answering denies that he ever applied to the legislature of New Jersey for any law to be passed in relation to said property, or for any other matter relating to said estate whatever.

And this defendant in further answering says, that lot No. 8 was put up for sale on the 3d November, 1829, and the highest bid that could then be got for the same was about $29 per acre, and that the commisssioners adjourned the sale at that bid until the next day; and that the only object of such adjournment was the hope of getting a higher price the next day. And this defendant, in further answering, expressly denies that the conditions, or any of them, were kept concealed to prevent just and proper competition, and to secure the lands at low prices to any person or persons whatever.

And this defendant in further answering denies, so far as he knows and believes, that Leonard Walling ever said before the sale that he was trying to pick up a company to join him in buying lot number 8, although he might have said that said lot number 8 would be a good place to build a dock, and that a company should be formed to buy it, and build a town on it, as the said Walling, as it was his duty to do, was very active in making the real or imagined advantages known, and in doing every thing he could do to make the property bring as much as possible; but whether said Walling ever did say so or not, this defendant is ignorant.

And this defendant in further answering says, that said lands were sold according to the lots contained within the red lines on said map of Leonard Walling, which were the only lots then laid down on said map, and that each of said lots contains the true amount of land contained in each, according to the best of this defendant's knowledge and belief; and this defendant in further answering, so far as he is concerned, expressly, and so far as the other commissioners and guardian are concerned, to the best of his knowledge and belief, denies that he or they was or were consulted about their being appointed before they were appointed, or that the said commissioners agreed to make a report that no partition of said estate was practicable before they had

surveyed and examined the premises in pursuance of said appointment, and then that they came to that conclusion from a conviction of its propriety, and made their report, in pursuance of said conviction, to the court, under their oaths, without any fraud, collusion, or covin whatever.

And this defendant in further answering denies expressly, so far as he is concerned, and so far as others are concerned, to the best of his knowledge and belief, that in the order at large of July 1st, 1829, of said orphan's court, it was, by and through the procurement of said commissioners and guardian, and others, falsely and fraudulently set forth and alleged that it appeared, by satisfactory proof to said court, that said tract of land could not be partitioned without great prejudice to the owners; and he further denies that said court were induced to grant said order, and did unlawfully grant the same, only upon the assent of the guardian, concurring with the representations and statements of the said commissioners unfairly and fraudulently intended and made to defraud the complainants.

And this defendant in further answering denies, to the best of his knowledge and belief, that, in view of obtaining such order of sale from said court, Daniel Holmes, Joseph Taylor, Richard C. Burrowes, Ezra Osborn, Isaac K. Lippincott, Primrose Hopping, James Hopping, and Leonard Walling, or any other person or persons whatever, formed a company to purchase said lots 5, 6, 7, 8, 9, and 10.

And this defendant in further answering denies that any proceeds of any sale or sales of wood or timber off of said property has ever come to his hands. And this defendant in further answering denies, expressly, that said report that said property could not be divided was falsely and fraudulently made to deceive the judges, and thereby to obtain their order of sale, or that the order approving said sales was fraudulently obtained in any way by said commissioners, or any other persons whatever, to the knowledge or belief of this defendant, or that the order of said court, directing deeds to be made, was obtained fraudulently in any respect whatever. And this defendant in further answering says, he expects and believes satisfactory proof was produced to the judges of the orphan's court that partition of said estate was not practicable without great prejudice to the interest of the owners; and this defendant denies that said map of Leonard Walling was ever kept concealed; and he further says, that he believes Leonard Walling wrote the said reports; but who wrote the orders of the court he is ignorant, unless it was the then surrogate. And he further says, that the said commissioners took no legal advice as to conduct of said sale, or preparation of any of said reports, and that said commissioners had nothing to do with, and did not interfere with, said orders.

And this defendant in further answering says, that the said estate was run off into the said 15 lots for the purpose of bringing it into market to the best possible advantage, and that the lots were so framed as that each part of the estate might get the greatest benefit from its peculiar advantage; and that the lots were so run off as to give the said

property all the advantages in the sale which its position admitted of, as this defendant submits it was their duty to do, and that if said estate had been sold otherwise, it would have lost all said advantages; and that at time of sale there were no names marked on Leonard Walling's map, and the names now upon it have been put there since, but how or when they came there, this defendant knows not, except that he expects they were put there in 1832, when there was a partial partition among the then owners.

And this defendant doth disclaim all right, title, or interest in the lands in the complainants' bill described, and every part thereof, and in all matters in said bill charged or alleged, and he denies all and all manner of unlawful combination and confederacy in the said complainants' bill charged against him, without that there is any other matter or thing in the said complainant's said bill of complaint contained, material or effectual for this defendant to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters or things this defendant is ready to aver, maintain, or prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor, and of counsel with defendant.

UNITED STATES OF AMERICA,
District of New Jersey, to wit:

Edward Taylor, of the said district, being duly sworn according to law, deposeth and saith, that the matters, facts, and things set forth in the foregoing answer, so far as they are stated as of, or relate to, his own knowledge, acts, or deeds, are true, and so far as they are stated upon the information of, or relate to, the acts and deeds of others, he believes them to be true.

EDWARD TAYLOR.

Sworn and subscribed before me, one of the commissioners, in said court, this 25th day of May, 1843.

DANIEL B. RYALL,
Comm'r &c., in circuit court United States.

Circuit court of the United States of America, for the district of New Jersey.

Between THOMAS KEARNY and others, complainants,
and
JOHN I. TAYLOR, Daniel Holmes, and others, def'ts.

The several answer of Daniel Holmes to the amended bill of complaint of Thomas Kearny and others, complainants, against them, the said John I. Taylor, Daniel Holmes, and others. This defendant,

now and at all times, saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, untruths, uncertainties, and imperfections in said bill of complaint contained, for a full and perfect answer thereunto, or to such parts and so much thereof as he is advised it is material or at all necessary for him to answer, he, answering, says, that he admits it to be true that he and John W. Holmes purchased out the interest of James P. Kearny in said Key Grove property, at the time specified in said bill, for the sum of sixteen hundred dollars, not, however, subject to said mortgage of four hundred dollars to William W. Foreman, but the said $1,600 was the whole of the purchase money, and out of it the said mortgage of Foreman was to be, and was, first paid; but he denies that said James P. Kearny was induced by any persuasions of this defendant, but, on the contrary, he asserts that it was only after repeated applications by said James P. Kearny that this defendant was induced to give him what he did. And this defendant says that the said $1,600 was the full market value of the said interest of James P. Kearny in said property at that time. And this defendant in further answering admits it to be true that he applied, in behalf of himself and John W. Holmes, to the orphan's court of the county of Monmouth, for partition of said estate, at the time set forth in said bill.

And this defendant in further answering says, that he bought the said interest of the said James P. Kearny of his own mere motion, without combination with any one; and he denies that he bought with the view of obtaining a sale, so that it might be improved as a seaport town.

And this defendant in further answering admits, that he did not wish the said property partitioned, because he then believed, and believes so still, that said property was so circumstanced that it could not have been divided among the heirs without great prejudice to his own interest as one of the owners, and also to the interest of the other owners; but he denies expressly that he made use of any means or persuasion to induce the commissioners to report one way or the other; and, so far as this defendant knows or believes, the report of the commissioners that said property could not be divided without prejudice, was the unbiassed and honest result of their own convictions, and without the persuasion or influence of any person or persons whatever, and made in the honest discharge of their official duties. And this defendant positively denies that he purchased said interest of James P. Kearny to obtain a sale, so that said property might be laid out and improved as a seaport town, or any other kind of town.

And this defendant in further answering denies that said commissioners, after the order to make deeds, permitted this defendant, Osborn, Lippincott, John I. Taylor, John Hopping, David S. Bray, Leonard Walling, and James Hopping, and Joseph Taylor, to enter on lots 5, 6, 7, 8, 9, and 10, and cut wood and timber off the same to any amount whatever; and he further says that, to the best of his

knowledge and belief, there was no wood or timber cut off of said premises until after the delivery of the deed from the commissioners to John I. Taylor.

And this defendant in further answering says, that, upon his petition as aforesaid, the said orphan's court, in their own free discretion, and without any suggestion from this defendant, or, so far as this defendant knows or believes, without the suggestion of any person, appointed the said James Hopping, Leonard Walling, and Edward Taylor commissioners, and without, so far as this defendant knows or believes, the said L. Walling, James Hopping, and Edward Taylor knowing or having any intimation that they would be, or were likely to be, appointed; and this defendant further says, that the said James Hopping, Leonard Walling, and Edward Taylor, from their well known probity and character, were eminently qualified to take upon themselves the duties of said commission.

And this defendant in further answering says, that from the time of the appointment of said Leonard Walling, James Hopping, and Edward Taylor as commissioners, they proceeded in the usual way to survey and view said premises, and made up their minds upon the propriety of the partition or sale, and reported their opinion to the court, without any interference on the part of this defendant, or of any other person or persons, so far as this defendant knows, and as he verily believes; and so far as this defendant knows, and as he verily believes, the said commissioners acted, in all things touching the sale and partition of said property, fairly and honestly, and with a single eye to the interest of the owners.

And this defendant in further answering says, he attended both days of sale, on the 3d and 4th of November, 1829, and it was his interest, design, and wish, and so far as he knows and believes, and to the best of his judgment, it was the design and wish of each and all of the commissioners, to make the said property bring the highest possible price. And this defendant did all he honorably and legally could do, and he believes each and all the commissioners did all they legally and honorably could do, to make said property bring the highest possible price, and that the conditions of sale were openly proclaimed to the people present, before the commencement of the sale, and posted up in a public place during its continuance, and that the conditions, so far as he can remember the same, are correctly set forth in the answer of Isaac K. Lippincott, and so far as regards himself, he says positively, and so far as regards the commissioners and others, to the best of his knowledge and belief, there were no other conditions of sale whatever, and that all the conditions of sale were alike accessible to all.

And this defendant in further answering says, that lot No. 8 was bid up on the first day of sale to about $29 or $30 per acre, and was then adjourned by the commissioners at the solicitation of this defendant, and that the only object this defendant had in procuring said adjournment was the hopes of making it bring more on the second day

of sale. That inasmuch as the said lot had no wood of any consequence upon it, and was worth but very little for agricultural purposes, private individuals had ceased to bid, and unless it had been adjourned it would probably have been struck off at $29 or $30 per acre, to some person, as this defendant understood, who was bidding for a person interested in property at Middletown Point, whose object in buying was to prevent any dock being built at Key Grove, which might interfere with their property at Middletown Point; and this defendant thought if the property was adjourned, he might perhaps induce several persons to join and thus run the lot No. 8 up on those who were bidding for Middletown. And accordingly this defendant, after the adjournment on the first day of sale, requested Richard C. Borrowes to return next day and join this defendant in bidding for said lot No. 8.

And this defendant in further answering says, he believed then, and believes still, that if said lot No. 8 had been sold on the 3d of November, 1829, it could not have been made to bring more than thirty dollars per acre, and what it brought more on the next day was owing to the exertions of this defendant and the commissioners.

And this defendant in further answering says, that after he got upon the ground upon the second day of sale he went to work, by going first to one person and then to another, to get up a company to bid for said lot No. 8, in opposition to the persons who it was understood were bidding from Middletown Point; and finally, after lot No. 1 was struck off to I. K. Lippincott, and with considerable difficulty, the following persons agreed verbally to join with this defendant in purchasing said lot No. 8: Isaac K. Lippincott, Richard C. Burrowes, Horatio N. Kearny, Ezra Osborn, Septimus Stephens, and he thinks Primrose Hopping. And this defendant says that, after the adjournment of the first day of sale he spoke also to James Hopping, one of said commissioners, to be interested, this defendant not then knowing that there was any thing illegal in his becoming so, but the said James Hopping absolutely refused on account of his being a commissioner; this defendant then requested him to speak to his brother John Hopping, when he went home, and see if he would not come in. And this defendant says that some one, either James or Primrose Hopping, reported next day that John Hopping would come in, and he was accordingly considered as one of the company at the sale.

And this defendant in further answering says, that said company was got up by this defendant on the spur of the occasion, and for no other purpose whatever but to create competition and make property bring more, and extended originally only to lot No. 8. And this defendant in further answering says, that neither James Hopping, Leonard Walling, [n]or Joseph Taylor, *were* [was] at the time of the sale a part of said company, or interested in any way in the purchase of any part of said lots 5, 6, 7, 8, 9, and 10.

And this defendant in further answering says, that the said commissioners were not interested in the purchase of any part of said Key

Grove property at the time of its sale, to the best knowledge and belief of this defendant.

And this defendant in further answering says, that the formation of said company did, as he had expected, create competition, and said lot No. 8 was run up in consequence thereof from $29 or $30 per acre to $43 per acre, at which price it was struck off to Burrowes, who was the highest bidder therefor, and who was appointed to bid for this defendant and company.

And this defendant further answering says, that his only object in getting up said company was to enhance the price of the property, and not because he wanted it himself, or believed or thought that any town could or would be built upon the same, without the outlay of as much capital as the property when improved would be worth.

And this defendant in further answering says, that after lot No. 8 was struck off to said Burrowes, the other lots, 5, 6, 7, 9, and 10, were bought by the company at the solicitation of this defendant, and by a loose, verbal understanding, made on the ground, as the lots were respectively put up; and that this defendant's only object in urging the additional purchase of 5, 6, 7, 9, and 10, was to create competition and get a better price for the property, and such were its effects. And this defendant in further answering says, that said Key Grove property brought more by several thousand dollars in consequence of the formation of said company as aforesaid by this defendant, than it otherwise would have brought.

And this defendant in further answering says, that said Key Grove property, and every part and parcel thereof, was sold fairly and without fraud, and for a sufficient consideration, and for several thousand dollars more than this defendant thought it was worth or would bring; and that this defendant does not believe said property would bring more now than it did then if in the same situation, and that the highest he ever heard said property valued [at] before the sale, was fifteen thousand dollars.

And this defendant further answering says, that he never cut or carried away any wood or timber off of said Key Grove property, nor does he know or believe that any other persons did, before the delivery of the deeds. And he further says, that said lot No. 8 was a poor, barren, sandy soil, with wood of but very little value upon it, and that said lots 5, 6, 7, 9, and 10, were very lightly timbered, and for the most part cut off.

And this defendant in further answering says, that after the confirmation of the sale by the orphan's court, and he believes about the 28th of February, 1830, he sold by word of mouth his interest in said lots 5, 6, 7, 8, 9, and 10, for forty dollars advance (out of which had to come about $15 expenses he had paid out) to Joseph Taylor. And that he so sold out, not as is charged in said bill, because he found out that the interest the commissioners and guardian had taken in said estate by way of purchase (of which they had none at the time of sale) was contrary to equity and justice, but because he had obtained his

object by running the property up as high as possible, and because he thought the expenses of improvements would be greater than the profit.

And this defendant in further answering denies that James Hopping, Leonard Walling, or Joseph Taylor were interested in said purchase of lots 5, 6, 7, 8, 9, and 10, at the time of the sale, but on the contrary he states positively that said company was originated and got up by himself, and that neither the said James Hopping, Leonard Walling, or Joseph Taylor, were members of said company at the time of said sale, on the 3d and 4th of November, 1829, or in any way interested or to be inserted therein.

And this defendant in further answering admits, that he refuses to co operate with the complainants in filing their said bill, not because, as is untruly stated in said bill, *because* the said Leonard Walling and James Hopping were induced by this defendant to become interested in said property, but because the said commissioners sold the said premises, and every part thereof, fairly, and without fraud, and for its full value, and the consideration money of which has been paid to, and received by, the commissioners, and from them by this defendant and the other complainants, and because he deems that now to unite with the complainants to destroy the title of the other defendants, and at the same time retaining the purchase money and recovering the improvements, would be to the last degree iniquitous and unjust, and because he deems that the title under the commissioners is good and effectual in law.

And this defendant in further answering says, that the deed from the said commissioners to said John I. Taylor was made and executed in good faith, and for a sufficient and full consideration, and with the consent of this defendant, and, so far as he knows and believes, with the consent of the persons reported to the court, and of all other persons interested therein. And this defendant in further answering says, that he denies that immediately after his said purchase of James P. Kearny, or at any other time, he communicated to said Joseph Taylor any purpose of obtaining an order to sell the whole of said real estate, although, as it was his duty as a neighbor to do, he might have communicated to him his intention of applying for partition, and might have expressed an opinion to said Taylor, that it would be better for the interest of the owners to have it sold than divided, and that said Taylor might have assented to such opinion; and this defendant states that such was and is his opinion, and that, so far as this defendant knows and believes, was the opinion of all the friends of said Kearny family, and of every intelligent person acquainted with the circumstances.

And this defendant in further answering says, that about the 28th February, 1830, he sold out his interest in his said purchase of lots 5, 6, 7, 8, 9, and 10, to the said Joseph Taylor, by a loose verbal contract, for the advance of $40, out of which had to come about $15 this defendant had paid out, in and about laying out the roads and

other expenses. But how the said Leonard Walling, and James Hopping, David S. Bray, and John I. Taylor, came afterwards to be interested, this defendant does not know, except as he has heard; that Leonard Walling came in at the solicitation of some of the others interested, some time after the sale, in place of Septimus Stephens, who voluntarily backed out from fear of the expense, and James Hopping came in at the request of his brothers, John and Primrose; John I. Taylor, as this defendant heard, bought out Richard C. Burrowes, and David S. Bray, Horatio N. Kearny, all of which changes took place by verbal arrangements among themselves after the sale, and after the confirmation of the sale by the said orphan's court, as this defendant has always understood and believed, but at what precise time this defendant does not know.

And this defendant in further answering denies that the commissioners fraudulently carried out any design, understanding, or collusion, between this defendant and said Joseph Taylor, to procure a sale of said estate, or realized large proceeds from the sale of said estate, or the wood and timber thereon.

And this defendant denies that he purchased with a view to sell, so that a company of persons which he should form should purchase and build a seaport or any other town.

And this defendant in further answering denies that he purchased said interest of James P. Kearny, for the purpose and with the intent of applying, ostensibly, for an order of partition, but in fact with the purpose and expectation of procuring to be made by the commissioners a report that no partition could be practicable without prejudice to the owners, and thereby obtain an order for the sale of the whole; and he denies that said commissioners were appointed by his procurement; and he further denies, that he influenced the action of the said court, or the said commissioners, in any manner relating to said estate. And this defendant denies that he ever had, or communicated to said Joseph Taylor, or any other person, an intention of bringing about a report that said property could not be partitioned without great prejudice to the owners, and thereby obtaining an order for a sale of the whole estate, with a view to the formation of a plan of a town and seaport on the premises, and to setting up building lots thereon, for sale upon speculation, or that said Joseph Taylor assented to any such design. And he further denies that the said Leonard Walling, Edward Taylor, and James Hopping were thereafterwards accordingly selected and named to said orphan's court, and being consulted, agreed to make a report that no partition of said estate was practicable, without injury to the owners. On the contrary, this defendant expressly asserts, that the said commissioners were appointed in the just and uninfluenced discretion of said court, without any interference on the part of this defendant, or of any other person, so far as he knows, and without any previous knowledge, on the part of this defendant, what the opinions of the commissioners *was*, or would be, respecting said partition, and without any consultation or conversation with them, relating to the

same whatever. And this defendant in further answering says, that said report of said commissioners, that said partition could not be made without injury, was the opinion of said commissioners, upon survey and examination, and under oath, and without any fraud, covin, or collusion whatsoever; and that said order of said court for sale was upon satisfactory proof, so far as this defendant knows, and as he verily believes. And this [defendant] denies that the report of the commissioners, that said estate could not be partitioned, was made unfairly, and with fraud, so as thereby to procure the order of sale, and he denies that it appears by the records of the orphan's court, that no evidence was produced, under oath, that said lands could not be partitioned; and he further denies, to the best of his knowledge and belief, that in said order at large of sale, it was by and through the procurement of said commissioners and guardian, and others, falsely and fraudulently set forth that it appeared, by satisfactory proof, that said land could not be partitioned without great prejudice to the owners, but on the contrary he says that, so far as he knows, and as he verily believes, said order at law is true, in point of fact, and made by the said court, and entered by their proper officer in pursuance thereof. And he denies that said judges were induced to grant said order of sale, and did grant said order, unlawfully, only upon the assent of said guardian concurring with the representations and statements of said commissioners, unfairly and fraudulently intended, and made to defraud the complainants. And he further denies that it was upon any fraudulent assent, or concurring statements of said commissioners, and not upon satisfactory proof, that said orphan's court made said order for sale, but he avers that, to the best of his knowledge and belief, said order of sale was made in the fair, just, and due course of legal proceedings. And this defendant in further answering denies that any company was formed by him to purchase any part of said property, until about noon of the 4th November, 1829.

And this defendant says that he now owns no part of said Key Grove property, and is no way interested therein, and has never been interested therein since he sold out as aforesaid to Joseph Taylor, except the proportion of the purchase money coming to him from the commissioners by virtue of his purchase from the said James P. Kearny; and this defendant denies that, by himself, or in conjunction with others, he has received any proceeds of sales of wood or timber off of said estate, or of lots sold therefrom, or conceals the same in any manner; and this defendant denies that any part of the purchase money of lots 5, 6, 7, 8, 9, and 10, were raised from the wood and timber cut therefrom, to the best of this defendant's knowledge or belief; and this defendant further denies that said report of commissioners, that lands could not be divided, was made fraudulently to deceive the said court, in order to obtain the order of sale, or that said order of sale was fraudulently obtained, or that the order of the court ordering deeds was fraudulently obtained; but on the contrary he avers, that each and every of said orders were made in the exercise of a just and legal dis-

cretion in the said court, and in the due and fair course of legal proceedings.

And this defendant in further answering says, that the map of Leonard Walling referred to in bill of complaint contains a true delineation of said property; and the lots thereon bounded by red lines, and numbered from 1 to 15, contain the lots as they were sold by commissioners, which map was at the sale for inspection, and had no names or lots bounded by black lines then upon it, and that said map contains the land to low-water mark; and this defendant further says, he has no knowledge that Leonard Walling, before he was appointed commissioner, said any thing about the fishing-point lot being a good site for a wharf, nor does he believe that he said so; and he further says, that he, this defendant, prior to November, 1829, had no wish or expectation to acquire said property, or any part thereof, for the purpose of establishing a seaport town, or any other town, nor does he know or believe that any other person or persons had any such wish or expectation; and this defendant in further answering says, that there was no plan of a town agreed upon before or while he was interested therein; that the main value of said estate, in the estimation of this defendant, and as he believes of the commissioners, was in lot No. 1, and the other lots were so shaped as was thought would give each section of the estate the benefit of any advantage it might be thought to have, and that the commissioners carried out that object with great ability, and that in the opinion of this defendant if lots 5, 6, 7, 8, 9, and 10, had been joined with lot No. 1, and sold as one lot, the whole would have brought but little more altogether than lot No. 1, and that said division of said estate into 15 lots, as they were laid on said map, was done, as the defendant believes, because the commissioners thought that said estate would bring more when so laid off, and in doing so, they intended to give lot No. 8 the advantage of its position.

And this defendant doth disclaim all right, title, or interest in the lands in the complainants' bill described, and every part thereof, and in all matters in said bill charged or alleged; and he denies all and all manner of unlawful combination and confederacy in the said complainants' bill charged against him, without that there is any other matter or thing in the complainants' said bill of complaint contained, material or effectual for this defendant to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall award; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solr., &c, of Counsel with Deft.

UNITED STATES COURT,
District of New Jersey, ss:

Daniel Holmes, of said district, being duly sworn according to law,

deposeth and saith, that the facts, matters, and things set forth in the foregoing answer, so far as they are stated as of or relate to his own knowledge, acts or deeds, are true; and so far as they are stated upon the information of, or relate to, the acts and deeds of others, he believes them to be true.

DANIEL HOLMES.

Sworn and subscribed this first day of June, 1843, before me, a commissioner of said court.

DANIEL B. RYALL,
Commissioner, &c.

Circuit court of the United States of America, for the New Jersey district.

Between THOMAS KEARNY and others, complainants,
and
JOHN I. TAYLOR, Oliver Vanderbilt, and others, defendants.

The several answer of Oliver Vanderbilt, one of the above defendants, to the bill of complaint of the above complainants: This defendant, saving and reserving unto himself all and all manner of exception to the many errors, imperfections, uncertainties, and untruths, in the said bill contained, for answer thereunto, or unto so much thereof as this defendant is advised is material for him to make answer unto, he answering says, that he always has been, and still is, a citizen and resident of the State of New York, and previous to the winter of 1838–1839, was a stranger to Key Port and its neighborhood; that some time during that winter one John P. Van Pelt hired this defendant to run the steamboat Wave, of which this defendant was then owner and captain, from New York to Key Port, and did run said boat for a short time between said places, but the arrangement shortly fell through; after which, some time in the month of February, 1839, as this defendant believes, William R. Jaques, who kept a public house at Key Port, sent to this defendant, requesting him to come to Key Port, and hire or lease the dock on said Key Port property, and to run his said steamboat Wave from Key Port to New York; that this defendant, in said month of February, went to Key Port in pursuance of said request. After this defendant got there, he heard that the company wished to sell out the balance of their land there at seven thousand dollars. This defendant then went into the room where the members of the company then were, where, after some time and consultation, this defendant finally agreed to purchase the property described in his deed from them, belonging to the company, at $7,000; and, accordingly, about the 25th of February, 1839, in consideration of $7,000, John Hopping and Mary, his wife, Patience Hopping, James Frost and Sarah, his wife, Mary Ann Hopping, Edward T. Hopping, John I. Taylor and Mary, his wife, Ezra Osborn and Hannah, his wife, James G. Crawford and wife, Leonard Walling and wife, David S.

Bray and wife, Isaac K. Lippincott and wife, made, and executed, and delivered to this defendant a deed for all the following portions of said estate, viz., all those tracts, lots, pieces or parcels of land, situate, lying, and being at Key Port, in the township of Middletown, in the county of Monmouth, and State of New Jersey, hereinafter more particularly described, butted and bounded as follows, to wit:

Tract or lot the first, known by the name of the tavern house lot, beginning at a stake distant thirty feet on a course of north seventy-three and a quarter degrees east, from the northeast corner of the lot where Leonard Walling now lives, and eleven and a half feet on a course of north, sixteen and three-quarters degrees west, from the north-east corner of William Hoff, Joseph D. Hoff, and Richard D. Walling, lot on which their store stands; from thence running, as the needle of Leonard Walling's compass pointed, in the year 1830, first, south sixteen and three-quarter degrees east, eighty-one and a half feet; second, south seventy-three and a quarter degrees west, thirty feet to the line of Leonard Walling's lot; third, south sixteen and three-quarter degrees east, one hundred and ninty-five feet eight inches to the line of lands belonging to Cornelius Ackerson; fourth, north seventy-three and one-quarter degrees east, one hundred and ninety-eight feet, to the south-east corner of David S. Bray's lot; fifth, north sixteen and three-quarter degrees west, one hundred and three feet seven inches, to the southeasterly corner of Lauretta Bell's lot; sixth, south seventy-three and a quarter degrees west, sixty-six feet, to the southeasterly corner of said Bell's lot; seventh, north sixteen and three-quarter degrees west, one hundred and seventy-three feet seven inches, to the road; eighth, south seventy-three and a quarter degrees west, one hundred and two feet, to where it began, containing ninety-three hundredths of an acre. Second, all that tract or lot beginning at the northwesterly corner of Captain William Forman's lot, which is in range of the east side of Key Port dock, from thence running, as the needle pointed, February 19th, 1839, first, north eight and a quarter degrees west, two chains and sixty-seven links, to the south side of the highway leading from Key Port to Manasconk Neck; second, east six chains and twenty links, to the northwesterly corner of William Hoff, junior's, lot; third, south twenty-seven degrees and five minutes east, two chains and eighty links, to the most southwesterly corner of William Hoff, junior's, lot; fourth, south seventy-three degrees and forty-two minutes west, twenty-five links, to a stake near the east edge of Necies's pond; fifth, south fourteen and a quarter degrees west, eighty-seven links; sixth, south five degrees east, one chain and thirty-six links; seventh, south ten and a half degrees west, eighty-two links; eighth, south seventy-three degrees and forty-two minutes west, thirty-two links; ninth, south seventy degrees east, seventy-six links; tenth, south forty-one and three-quarter degrees east, one chain and sixty-two ——, to the line of Hopping's lands; eleventh, south seventy-three degrees and forty-two minutes west, three chains and forty-one links, along said Hopping's line, to the easterly corner of Alfred Walling's lot; thirteenth, north seven-

ty-three degrees and forty-two minutes east, sixty-two links, to a ditch on the westerly side of Necies's pond; fourteenth, seven and three-quarter degrees west, seventy-five links, to the southeasterly corner of James Willet's lot; fifteenth, north twenty-three degrees and forty minutes west, fifty-seven links, to a cedar in said Willet's line; sixteenth, north thirty-five and a half degrees west, one chain and fifty-one links, to the northeasterly corner of Captain William Forman's lot; seventeenth, south seventy-three degrees and forty-two minutes west, two chains and seventy-four links, to where it began; containing three acres and fifty-nine hundredths of an acre, bounded on the north by the road leading from Key Port to Manasconk Neck, on the easterly side by the westerly side and ends of eight building lots, which *was* laid off in the month of June, in the year of our Lord eighteen hundred and thirty-four, from the street to or near the easterly edge of Necies's pond, on the southerly side by lands of John Hopping and the heirs of James Hopping, deceased, and on the westerly side by lands of Alfred Walling, the ditch on the westerly side of Necies's pond, where the road between said Alfred Walling's lot and James Willet's lot crosses said pond, and the lot of said James Willet, and the lot of Captain William Forman. Third, all that tract or lot of land beginning in the north edge of the highway leading from Key Port to Manasconck Neck, and in the line of the westerly side of John Sprowl's land; from thence running, as the needle pointed in the month of February, A. D. 1839, first, west twelve chains and fifty-nine links, to the west edge of a three rod road leading to Key Port dock; second, south eight and a quarter degrees east, five chains and forty links, to a stake distant seventy-six links, on a course of north seventy-three degrees and forty-two minutes east, from the southeasterly corner of the park in front of the tavern house; third, south seventy-three degrees and forty-two minutes west, six chains and eleven links; fourth, south sixteen degrees and eighteen minutes east, thirty seven and a half links, to the northerly edge of the highway leading from Key Port to Brown's Point; fifth, south sixty-three degrees and two minutes west, along the northerly edge of said highway leading to Brown's Point, eight chains to the line of Isaac K. Lippencott's land; sixth, north twenty-seven degrees and fifty-three minutes west, three chains and fifty links, to Kearny's or Key Port cove; thence, eighth, northesterly and easterly along said cove, including Key Port dock and storehouse, to the line of John Sprowl's land; thence, eighth, south twenty-eight degrees and ten minutes east, along said John Sprowl's line, five chains and forty-nine links, to where it began; containing eleven and a quarter acres, be the same more or less.

And this defendant in further answering says, that he did not act under the advice of legal counsel in the matter, but entirely without counsel.

And this defendant further says, that he had no notice in fact of any of the frauds charged in said complainants' bill, and he denies that he had notice in fact before his said purchase of any illegality, informal-

ity, or fraud in his title, or in the title of his vendors; and he denies that he is a purchaser with notice of any fraud whatever that could, might, or ought, to affect his title in any way whatever.

And this defendant in further answering says, that he is a bona fide purchaser of said property mentioned in said deeds, for the consideration of $7,000, without notice, in fact, of any fraud charged or alleged in said bill of complaint.

And this defendant further states, that he did not search the records, either in the clerk's office, or surrogate's office, in the county of Monmouth, prior to his said purchase, in relation to the title of said Key Grove property, or any part thereof.

And this defendant in further answering says, that he had been acquainted with the said Leonard Walling by character, previous to his said purchase, and understood that several of the other of his vendors were men of property and character, and that having never heard any insinuation, doubt, or question respecting the soundness of the title of his vendors, he took their deed and warrantee without search or inquiry into the title, except that he asked Leonard Walling if it was all right, who replied that it was, and that he bought depending upon the character of his vendors, and their warrantee.

And this defendant in further answering says, that he paid to his said vendors in cash, upon the delivery of the deed, on the 25th February, 1839, four thousand dollars; two thousand more on the first of April, 1839, and the balance of the purchase money has since all been paid by this defendant to his vendors, and that at the time when he paid the $6,000 above mentioned, he did it bona fide, without any notice, and without ever having heard of any of the frauds charged in said bill of complaint, or of any frauds, illegalities, or informalities whatever, in relation to the title of said estate.

And this defendant further saith, that the first hint, intimation, or warning that he ever had, that his title could be impeached for any cause whatever, was after the writ, or just about the time the writ, of ejectment, mentioned in the bill of complaint, was served upon William B. Jacques, his tenant; and that when this defendant bought, and until the commencement of the suit in ejectment, he did not know, and had never heard, that his vendors held under any order of any orphans' court, to the best of this defendant's memory.

And this defendant in further answering says, that although the deeds referred to in the bill of complaint may have been upon record, yet that he never in fact before his said purchase had seen any of them, and had never heard of and did not know their contents, and that he did take his deed and pay $6,000 of the purchase money, without ever hearing of or coming to any knowledge of the facts contained in said deeds, and without any knowledge of the frauds charged in said bill. And this defendant submits, that he is not chargeable with constructive notice of the contents of said deeds, or of the proceedings in the orphan's court, or with any other constructive notice whatever.

And this defendant in further answering says, that he never has, nor

has any person for him, referred to the records in the surrogate's office, to satisfy him of the title of the vendors or for any other purpose whatever, and that he accepted the deed of conveyance without any knowledge of the vendors' title, except his inquiry of Leonard Walling as aforesaid, and the fact of their possession, and the improvement put upon it by them, and that their title was, so far as this defendant learnt, universally recognised in the neighborhood, and that this defendant, until after his said purchase, and until the ejectment was commenced against his said tenant, had no hint, notice, intimation, information, or knowledge in any way whatever, tending to show the title of his vendors was subject to any doubt or impeachment whatever.

And this defendant in further answering says, that neither he nor any attorney or counsel for him had any actual knowledge of the deed of John I. Taylor, to the commissioners and guardian, of the 28th April, 1830, or of the plan of the 24 lots therein mentioned as made on the 9th April, 1830, and that neither this defendant or any other person in his behalf ever saw said plan or a copy of it, previous to the trial of the ejectment cause against this defendant, referred to in the bill of complaint, in October, 1842.

And this defendant in further answering says, that he had no counsel or attorney engaged in his behalf in relation to his purchase of said property, and that he did not examine the records of deeds nor the records of the orphan's court, because he understood and believed that his vendors were men of character and property, and he believed he was protected and secured by his warrantee, and because the title of the grantees seemed to be universally recognised, and he heard no hint, or whisper, or intimation that their title was not good, or liable to any impeachment whatever, and because, being without counsel, he was not aware that it was prudent or necessary for him to do so. This defendant has heard and believed that said grantees had been for several years in possession, that they had put valuable improvements upon the same, and that most of the villagers of Key Port held under them. And he also might have heard that the grantors held under Edmund Kearny, although he does not remember so to have heard; and he might have heard, although he does not remember so to have heard, that said grantors held under an order of the orphan's court; but even if this defendant did hear that said grantors held under an order of the orphan's court, and Edmund Kearny, he did not therefore make any searches in the registry office, or the surrogate's office, but took it for granted that said proceedings in the orphan's court were correct and legal; and even if this defendant had searched such clerk's and surrogate's office, he would not have known, without the assistance of counsel, in point of fact, from any facts therein disclosed, that the title of his grantors could have been impeached. And he submits, that there is nothing upon said records which should charge him with constructive notice that said commissioners, or any or either of them, or Joseph Taylor, were interested in said property before the 28th April, 1830, or with constructive or any actual notice of anything which could or

ought to impair or impeach his title to said premises, or any part thereof; or, at any rate, further than as to the interest of said James Hopping and Leonard Walling.

And this defendant in further answering to the third interrogatory of the amended bill says, that he never heard of any doubts, questions, or rumors of any sort against the title of the purchasers under the auction sales and the order of the orphan's court, until the fall of 1840, when a printed brief of George Sullivan, esq., was circulated among the tenants; when, but from whom or where he does not now remember, he for the first time heard that said Sullivan had pretended to discover some flaw in the title, because the sale under the order of the orphan's court had been made to one person and the deed executed to another; but he, at the same time, heard and believed that said sale was in all respects fair, and for a full consideration. And this defendant in further answering says, that on the 12th November, 1841, in consideration of $205 he conveyed a portion of his said premises to John C. Schenck, which premises are described in a deed from this defendant recorded in Monmouth clerk's office, in book F 4, page 7, as by reference to same will appear; and on the 12th November, 1841, for $1,000, conveyed another portion thereof to William R. Jaques, described in deed recorded in said office, in book D 4, 403; and on 3d April, 1841, for $375, conveyed a portion to David Warner, described in deed recorded in book C 4, 205, of said office; and on 1st April, 1841, for $6,000, conveyed another portion to John C. Schenck and others, described in deed recorded in said office, in book C 4, 128, and who now own and occupy the same, some of which said purchasers have since put valuable improvements upon the same, and he submits that they ought to have been made parties to this suit. And this defendant claims, under his said deed from his grantors, all the share in front and adjoining his said premises, by virtue of his said deed.

And this defendant in further answering says, that it appears by said amended bill of complaint that this defendant is and was a citizen of the State of New York and resident therein, which is in fact the truth, and he submits that this court has no jurisdiction of the matter, and he claims the same benefit thereof as if he had demurred to said bill therefor, or specially pleaded the same. And this defendant in further answering says, that there are a great many others holding, under the same grantors, portions of said estate formerly of Edmund Kearny, and he submits that they ought to be made parties to this suit. And he further charges that said complainant received from the said commissioners or their guardian their whole share of the purchase money for which said estate was sold; and he submits, that if said sale of commissioners be void, that they, the said complainants, should repay to the persons entitled the said purchase money with interest. And he further states that great and valuable improvements have been put by the said Jacques and his grantors, and by a great many persons holding under them, under a belief that said sale of commissioners was fair and legal; and he submits that said complainants' complaint of said sale

be set aside, and, before they recover possession of the said premises, should account and pay to the persons legally entitled thereto the fair value of said improvements with interest.

And this defendant in further answering denies all and all manner of unlawful combination and confederacy in the said bill of complaint charged against him, without that there is any other matter or thing, in said bill of complaint contained, material or effectual, for this defendant to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters or things this defendant is ready to aver, maintain, or prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor, and of counsel with defendants.

UNITED STATES OF AMERICA,
District of New Jersey, to wit:

Oliver Vanderbilt, of the State of New York, being duly sworn according to law, deposeth and saith, that the matters, facts, and things set forth in the foregoing answer, so far as they are stated as of, or relate to, his own knowledge, acts or deeds are true, and so far as they are stated upon the information of, or relate to, the acts and deeds of others, he believes them to be true.

OLIVER VANDERBILT.

Sworn and subscribed before me, a commissioner, &c., of said court, this first day of June, 1843.

SAMUEL CASSEDY,
Commissioner of said court.

Circuit court of the United States of America, for the district of New Jersey.

Between JOHN I. TAYLOR and others, defendants,
and
THOMAS KEARNY and others, complainants.

The answer of Richard C. Burrowes to the amended bill of complaint of Thomas Kearny and others against the said John I. Taylor, this defendant, Richard C. Burrowes and others: This defendant, now and at all times, saving and reserving unto himself all and all manner of benefit and advantage of exception, which can or may be had or taken to the many errors, untruths, deficiencies, and other imperfections in the said bill of complaint contained, for a full and perfect answer thereunto, or to so much and such parts thereof as he is advised it is at all material or necessary for him to make answer unto, he answering says, that he attended said sale of Key Grove property on the 3d November, 1829, in consequence of having seen the advertisement

or heard of it otherwise, and with no desire or intention of bidding for or purchasing any part of it, and with no belief or anticipation that said property would or could be converted into a town.

And this defendant, in further answering, expressly denies, that previous to said sale he combined with any person or persons whatever to procure a sale of said property, nor does he know or believe that any such combination existed among any persons whatever. And that the first he knew or heard that any company would be formed for the purchase of any part of said Key Grove property, was on the first day of sale, after the adjournment, when after this defendant had mounted his horse for the purpose of going home, with an intention of not returning, he was solicited by Daniel Holmes to return the next day and join him in purchasing the lot No. 8.

And this defendant, in consequence of said request, returned to the sale the next day, which he otherwise would not have done. And this defendant, in further answering, says, that on the second day of sale, through the instrumentality of Daniel Holmes, a number of persons joined to bid for lot No. 8, by Daniel Holmes, this defendant, Ezra Osborn, Isaac K. Lippincott, Septimus Stephens, Primrose Hopping, and Horatio N. Kearny, but this defendant did not know that Stephens and Horatio N. Kearny were interested, until the evening of the sale, and this defendant agreed to bid for the lot; that the said lot No. 8 was put up at what it had been bid up to on the preceding day, and through the bidding of this defendant it was run up to $43 per acre, when it was openly and fairly struck off and sold to this defendant as the highest bidder, and that it was only in consequence of the urgency of said Daniel Holmes as aforesaid, and the formation of said company, that this defendant bid for said lot at all. And this defendant, in further answering, says, that after lot No. 8 was struck off, the other lots, 5, 6, 7, 9, and 10, were sold and bought on the same account, by a loose verbal understanding among some of the company, as the said lots were respectively put up. And this defendant in further answering says, that neither of the said commissioners, nor the said guardian, Joseph Taylor, were one of said company, nor in any way interested in the purchase of said lots 5, 6, 7, 8, 9, and 10, or in any other part of said estate at the time of said sale on the 3d and 4th November, 1829. And this defendant, in further answering, says, that the same day of the sale, not believing that anything could be realized out of said purchase, worth his trouble to attend to it, he sold out by word of mouth his interest in said lots 5, 6, 7, 8, 9, and 10, to Ezra Osborn for $41 advance; which interest afterwards was transferred to John I. Taylor, as this defendant was informed and believes. And this defendant, in further answering, says, that he never cut any wood or timber whatever upon said premises, or received any of the proceeds thereof, nor was permission given to him to cut any, nor does he know or believe that the commissioners permitted any body else to cut wood and timber on said premises before the delivery of the deeds, and this defendant in further answering says, that the deed for said lots 5, 6, 7,

8, 9, and 10, from the said commissioners to said John I. Taylor, was executed with his consent, and with the consent, as far as this defendant knows or believes, of all persons interested therein; and that said deed, so far as this defendant knows or believes, was executed in good faith, and for a sufficient consideration, and that said sale was made fairly and without fraud.

And this defendant in further answering says, that he bid for said lot out audibly, and he was the only person reported as the purchaser to the commissioners, and the only person known to them officially, as the purchaser, and that he was accepted by them as the purchaser, and his responsibility accepted by them; and he submits that, in contemplation of law, as regards the commissioners, he was the only purchaser, and that the said commissioners, so long as nothing was done unfairly or fraudulently, had no right, if they were satisfied with his responsibility, to know or inquire who were interested with him, or to act upon any presumption of any understanding between him and third persons respecting the said purchase. And this defendant in further answering expressly denies, so far as he is concerned, and so far as others are concerned, to the best of his knowledge and belief, that there were any secret conditions of sale whatever, or that there were any conditions of sale whatever, except those which were publicly put up and proclaimed to the people present at said sale.

And this defendant in further answering says, that he admits that his wife is a daughter of said Joseph Taylor, but he says that said Joseph Taylor died several years since intestate, and that John I. Taylor, his administrator, did, several years before the commencement of the suit in ejectment, mentioned in said bill, sell out all Joseph Taylor's interest in said Key Grove property, to pay debts, under an order of the orphan's court of the county of Monmouth, without warranty, and that this defendant, so far as he knows and believes, has no interest in the matters alleged in said bill of complaint; and this defendant, in further answering denies that there were any conditions of sale that the purchasers might enter upon said lands immediately, and provide for paying the purchase money out of the sales of the wood and timber; and this defendant in further answering says, that he never interfered, directly or indirectly, in any way whatever, in any matter relating to the appointment of the said commissioners, or to the partition or sale of said estate, or to the orders of said court respecting the same, but that all of said proceedings, so far as he knows and believes, were in the due fair course of legal proceedings, and that he became interested in said lots 5, 6, 7, 8, and 10, as aforesaid, and not otherwise, and that previous to his said purchase he had no idea that said property would be converted into a seaport town; and this defendant denies that said sale was made for the use of two of said commissioners, and the said guardian, Joseph Taylor, or either of them, or that the said commissioners and guardian, or either of them, combined with this defendant for that purpose, or with any other person, to the knowledge or belief of this defendant; and this defendant in further answering says, that he has no doubt that the formation of said company by D. Holmes caused the

said property to bring more, by several thousand dollars, than it would otherwise have brought; and this defendant in further answering says, that the said commissioners, in all things relating to said estate, acted fairly and to the best of their ability, and got the highest price they could for said *property*, to the best of this defendant's knowledge and belief, and that said property, and every part thereof, was sold fairly and without fraud, and for a full and sufficient consideration, and that the purchase money was received by the said commissioners; and that said deed from said commissioners to Jno. I. Taylor, was executed in good faith, and for a sufficient consideration, and with the consent of this defendant, and of all other persons in interest, so far as he knows and believes.

And this defendant further states, that he was not present in court when any of the said orders were made, or the said commissioners appointed, and does not know any thing in relation thereto, but has always believed and understood that every thing in relation thereto was done fairly and in the due course of legal proceedings; and so far as he is concerned, denies absolutely any covin, fraud, collusion, or interference in any manner in relation thereto, nor does he know or believe that any other person or persons was or were guilty of any covin, fraud, collusion, or improper interference in relation thereto, and he denies that, in view of obtaining said order of sale, he, with Daniel Holmes and others, formed a company with James Hopping and Leonard Walling to purchase said lots 5, 6, 7, 8, 9, and 10, or any or either of them. And this defendant in further answering says, that he is not sufficiently acquainted wtth said property to form an opinion whether said estate could or could not have been partitioned by said commissioners among the owners thereof, without great prejudice to the interest of the owners. And this defendant says that there was no plan of a town adopted or agreed upon before or while he was interested in said property.

And this defendant doth disclaim all right, title, or interest in the lands in the complainants' bill described, or any part thereof, and in all matters charged or alleged in said bill; and he denies all and all manner of unlawful combination and confederacy in the said complainants' bill charged against him, without that there is any other matter or thing in the complainants' said bill of complaint contained, material or effectual for this defendant to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor and of counsel with def'dt.

UNITED STATES CIRCUIT COURT,
New Jersey district, ss:

Richard C. Burrowes, of said district, being duly sworn according to law, deposeth and saith, that the facts, matters, and things set forth in

the foregoing answer, so far as they are stated as of or relate to his own knowledge, acts, or deeds, are true, and so far as they are stated as of or upon the information, or relate to the acts and deeds of others, he believes them to be true.

RICHARD C. BURROWES.

Sworn and subscribed this 30th day of May, 1843, before me, a commissioner and of said court.

DANIEL B. RYALL,
Commissioner, &c.

Third circuit court of the United States, for the New Jersey district.

Between JOHN I. TAYLOR and others, defd'ts,
and
THOMAS KEARNY and others, compl'ts. } In equity.

The joint and several supplemental answer of John I. Taylor, Ezra Osborne, John Hopping, Theresa Walling, and Edward Hopping, by leave of the court first had and obtained for that purpose, to the amended bill of complaint of Thomas Kearney, Anne E. Kearney, Catharine Kearney, George C. Thomas and Anastasia, his wife, and Horatio N. Kearney, complainants, against them the said John I. Taylor, John Hopping, Theresa Walling, Edward Hopping, and others. These defendants in this their supplemental answer say, that since the filing of their original answer in this cause, to wit, on the fourteenth day of February, eighteen hundred and forty-four, the council and general assembly of the State of New Jersey passed a private act of the said the council and general assembly of the State of New Jersey entitled an act to confirm the sales of the real estate, whereof Edmund Kearney, deceased, late of the county of Monmouth, died seized, of which said act the following is a true copy, viz:

An act to confirm the sales of the real estate, whereof Edmund Kearney, deceased, late of the county of Monmouth, died seized.

Whereas, the orphan's court of the county of Monmouth, in this State, in the term of April, eighteen hundred and twenty-nine, upon the petition of Daniel Holmes, appointed James Hopping, Edward Taylor, and Leonard Walling, commissioners to divide the real estate whereof Edmund Kearney, deceased, late of said county of Monmouth, died seized, among the persons entitled thereto, upon which application such proceedings were had that in the term of July, eighteen hundred and twenty-nine, the said orphan's court ordered said commissioners to sell said real estate, under which last mentioned order the said commissioners, on the third and fourth days of November, eighteen hundred and twenty-nine, sold said real estate, consisting of a tract of land containing about seven hundred and eighty-one acres, situated in the township of Middletown, in the county of Monmouth aforesaid, in parcels, to the following persons, namely:

Lot number 1, containing two hundred and twenty-four acres and

eighty-two hundredths of an acre, or thereabouts, to Isaac K. Lippincott, for the sum of six thousand seven hundred and forty-four dollars and sixty cents, or about that sum.

Lot No. 2, containing fifty six acres and forty-two hundredths of an acre, or thereabouts, to Thomas Carhart, for the sum of one thousand five hundred and ninety-three dollars and eighty-six cents, or about that sum.

Lot No. 3, containing thirty-two acres and eighty-five hundredths of an acre, or thereabouts, to Amos Walling, for the sum of eight hundred and seventy-eight dollars and seventy-three and three-quarters of a cent, or about that sum.

Lot No. 4, containing eighteen acres and forty-three hundredths of an acre, or thereabout, to Jonathan Tilton for the sum of seven hundred and nine dollars and fifty-five and a half cents, or about that sum.

Lot No. 5, containing fifty-nine acres and fifty-two hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of one thousand three hundred and thirty-nine dollars and twenty cents, or about that sum.

Lot No. 6, containing fifty-six acres and eighty-four hundredths of an acre, or thereabout, to Ezra Osborn, for the sum of seven hundred and fifty-three dollars and thirteen cents, or about that sum.

Lot No. 7, containing forty-eight acres and forty-six hundredths of an acre, or thereabout, to Isaac K. Lippincott, for the sum of one thousand two hundred and twenty-three dollars and sixty-one cents, or about that sum.

Lot No. 8, containing twenty-four acres and eleven hundredths of an acre, or thereabout, to Richard C. Burrowes, for the sum of one thousand and thirty-six dollars and seventy-three cents, or about that sum.

Lot No. 9, containing seven acres and thirty-four hundredths of an acre, or thereabouts, to Isaac K. Lippincott, for the sum of one hundred and thirty-five dollars and seventy-nine cents, or about that sum.

Lot No. 10, containing sixteen acres and fifty-seven hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of one hundred and ninety-four dollars and sixty-nine and three-quarter cents, or about that sum.

Lot No. 11, containing fifty-nine acres and thirteen hundredths of an acre, or thereabout, to James Sprowl, for the sum of one thousand nine hundred and eighty dollars and eighty-five cents, or about that sum.

Lot No. 12, containing twenty-six acres and two hundredths of an acre, or thereabout, to Thomas J. Walling, for the sum of eight hundred and fifty-eight dollars and sixty-six cents, or about that sum.

Lot No. 13, containing forty-nine acres and forty-two hundredths of an acre, or thereabout, to Amos Walling, for the sum of one thousand four hundred and fifty-seven dollars and eighty-eight cents, or about that sum.

Lot No. 14, containing forty acres and thirty-five hundredths of an acre, or thereabout, to Joseph Carhart, for the sum of two hundred and eighty-two dollars and forty-five cents, or about that sum.

Lot No. 15, containing sixty-one acres and thirty-four hundredths of an acre, or thereabout, to Horatio Kearny, for the sum of seven hundred and fifty-one dollars and forty-one cents and a half, or about that sum; amounting in the whole to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, or about that sum, who were duly reported by said commissioners to the said orphan's court in the term of January, eighteen hundred and thirty, as the purchasers of said property; and thereupon the said orphan's court, in said term of January, eighteen hundred and thirty, duly approved and confirmed said sales, and ordered the said commissioners to make deeds therefor to the purchasers respectively.

And whereas, after the said sale, some of the said purchasers parted with their interest in whole or in part for a valuable consideration in the property thus purchased by them as aforesaid, in consequence whereof some of the deeds were made and executed, not to the purchasers at the said commissioners' sale, but to the person or persons who held under such purchaser or purchasers, that is to say, the deed for lot No. 4, purchased at said commissioners' sale by Jonathan Tilton, was made by the said commissioners to Joseph R. Walling; the deeds for lots Nos. 5, 6, and 10, purchased at said commissioners' sale by Ezra Osborn, and for lots 7 and 9, purchased at said commissioners' sale by Isaac K. Lippincott, and for lot No. 8, purchased at said commissioners' sale by Richard C. Burrowes, were made by said commissioners to John I. Taylor. The deed for lot No. 13, purchased at said sale by Amos Walling, was made by said commissioners to Amos Walling, Douglass E. Stout, and William Walling; and the deed for lot No. 11, purchased at said sale by James Sprowl, was made to James Sprowl, John Sprowl, and Joseph Sprowl, which is alleged to be irregular; and whereas the said deeds were made and accepted under the full impression and belief on the part of the said commissioners and purchasers, that such substitution was frequently made, and that the same was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself:

And whereas it is represented that some or all the said commissioners were at the time of, or shortly after, the said sale by the said commissioners, in some way interested in said property, or some part thereof, by reason of all which, and other alleged informalities and irregularities in the said sales and conveyances of the said property by the said commissioners, doubts have arisen respecting the title to all of said lots:

And whereas it is represented that the said sale by the said commissioners and the conveyances by them subsequently made, were made in good faith, and for a fair, just, and full consideration, which consideration has all been honestly and fully paid to the persons lawfully entitled to receive the same:

And whereas, since the said sale by the said commissioners, great and valuable improvements have been made and put upon the said property, and that the same is now in the hands of many innocent owners and occupants, holding under the said deeds from the said commissioners, and it is expedient and just to have the difficulties, if any

exist, removed, and the titles, if they be defective, confirmed by legislative enactment:

Now, therefore, for the purpose of quieting the titles of said purchasers, and of all who hold under the said commissioners, either directly or by subsequent conveyance or conveyances:

Sec. 1. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, That the several deeds, so given by the said commissioners for the said several lots, shall be deemed and taken, and the same are hereby declared to be, valid and effectual in law to convey the estate therein and thereby intended to be conveyed; and that the said deeds, or any of them, and all subsequent conveyances of the said estate, or any part thereof, shall not be impeached in any court whatever for any such alleged interest in the said commissioners, or any of them, in the property so sold by them as aforesaid, or for any alleged defect or informality in the execution of the powers of the said commissioners, or in the proceedings of the said orphan's court; and that the said deeds, or any of them, shall not be invalidated or impeached upon any other ground than that of absolute, direct, and actual fraud on the part of the said commissioners.

Passed February 14th, 1844.

As by reference to a duly certified copy of said act, now in the possession of these defendants, will more fully appear.

And these defendants in further answering say, that according to the best of their respective knowledge, information, or belief, there was no fraud, either absolute, direct, or actual, or any fraud whatever, on the part of the said commissioners in or about the partition and sale of said real estate, or in or about the execution or delivery of the deeds therefor, or in or about any other matter or thing relating to the partition and sale of said real estate, or executing the said deeds therefor, but that every thing in and about the said partition and sale, and relating thereto, was fair.

And these defendants in further answering say, that these defendants are informed and believe, that the said act was passed by the said council and general assembly for the purpose, and with the view to quiet the titles of these defendants, and others interested in said lands under said sales and commissioners' deeds, and they submit that the said act is a good defence to the matters and things set forth in the complainants' bill of complaint.

And these defendants in further answering say, that the proceedings in the orphan's court, lands, sales, commissioners, purchasers, and deeds described and mentioned in said act of the council and general assembly of the State of New Jersey, are the same proceedings in the orphan's court, lands, sales, commissioners, purchasers, and deeds, as are described in the complainants' bill of complaint.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall award, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained. P. VREDENBURGH,

Solicitor and of counsel with the said defendants.

THE UNITED STATES OF AMERICA,
District of New Jersey, ss.

Ezra Osborn, John Hopping, John I. Taylor, Edward Hopping, and Theresa Walling, of the county of Monmouth, in said district, being severally and duly sworn according to law, severally depose and say, that the matters, facts, and things set forth in the foregoing supplemental answer, so far as they are stated as of, or relate to, their own respective knowledge, acts, and deeds are, t ue, and so far as they are stated upon the information of, or relate to the acts and deeds of, others, they believe them to be true.

EZRA OSBORN,
JOHN HOPPING,
JOHN I. TAYLOR,
EDWARD T. HOPPING,
THERESA WALLING.

Sworn and subscribed this 13th day of June, 1844, before me, a commissioner, &c., in said court.

DANIEL B. RYALL.

Third circuit court of the United States, for the New Jersey district, in equity.

Between JOHN I. TAYLOR, Richard C. Burrows, and others, defendants,
and
THOMAS KEARNY and others, complainants.

The supplemental answer of Richard C. Burrows, by leave of the court for that purpose first had and obtained, to the amended bill of complaint of Thomas Kearny, Anne E. Kearny, Catharine Kearny, George C. Thomas and Anstasia, his wife, and Horatio N. Kearny, complainants, against them, the said John I. Taylor, Richard C. Burrowes, and others.

This defendant, in this his supplemental answer, says, that since the filing of his original answer in this cause, to wit, on the fourteenth day of February, eighteen hundred and forty-four, the council and general assembly of the State of New Jersey, passed a private act of the said the council and general assembly of the State of New Jersey, entitled "An act to confirm the sales of the real estate whereof Edmund Kearny, deceased, late of the county of Monmouth, died seized," of which said act the following is a true copy, viz:

"An act to confirm the sales of the real estate whereof Edmund Kearny, deceased, late of the county of Monmouth, died seized."

Whereas the orphan's court of the county of Monmouth, in this State, in the term of April, eighteen hundred and twenty-nine, upon the petition of Daniel Holmes, appointed James Hopping, Edward Taylor, and Leonard Walling, commissioners, to divide the real estate whereof Edmund Kearny, deceased, late of said county of Monmouth,

died seized, among the persons entitled thereto; upon which application such proceedings were had, that, in the term of July, eighteen hundred and twenty-nine, the said orphan's court ordered said commissioners to sell said real estate; under which last mentioned order the said commissioners, on the third and fourth days of November, eighteen hundred and twenty-nine, sold said real estate, consisting of a tract of land containing about seven hundred and eighty-one acres, situated in the township of Middletown, in the county of Monmouth aforesaid, in parcels, to the following persons, viz:

Lot No. 1, containing two hundred and twenty-four acres and eighty-two hundredths of an acre, or thereabout, to Isaac K. Lippincott, for the sum of six thousand seven hundred and forty-four dollars and sixty cents, or about that sum.

Lot No. 2, containing fifty-six acres and forty-two hundredths of an acre, or thereabout, to Thomas Carhart, for the sum of one thousand five hundred and ninety-three dollars and eighty-six cents, or about that sum.

Lot No. 3, containing thirty-two acres and eighty-five hundredths of an acre, or thereabout, to Amos Walling, for the sum of eight hundred and seventy-eight dollars and seventy-three and three-quarters of a cent, or about that sum.

Lot No. 4, containing eighteen acres and forty-three hundredths of an acre, or thereabout, to Jonathan Tilton, for the sum of seven hundred and nine dollars and fifty-five and a half cents, or about that sum.

Lot No. 5, containing fifty-nine acres and fifty-two hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of one thousand three hundred and thirty-nine dollars and twenty cents, or about that sum.

Lot No. 6, containing fifty-six acres and eighty-four hundredths of an acre, or thereabout, to Ezra Osborn, for the sum of seven hundred and fifty-three dollars and thirteen cents, or about that sum.

Lot No. 7, containing forty-eight acres and forty-six hundredths of an acre, or thereabout, to Isaac K. Lippincott, for the sum of one thousand two hundred and twenty-three dollars and sixty-one cents, or about that sum.

Lot No. 8, containing twenty-four acres and eleven hundredths of an acre, or thereabout, to Richard C. Burrowes, for the sum of one thousand and thirty-six dollars and seventy-three cents, or about that sum.

Lot No. 9, containing seven acres and thirty-four hundredths of an acre, or thereabout, to Isaac K. Lippincott, for the sum of one hundred and thirty-five dollars and seventy-nine cents, or about that sum.

Lot No. 10, containing sixteen acres and fifty-seven hundredths of an acre, or thereabout, to Ezra Osborn, for the sum of one hundred and ninety-four dollars and sixty-nine and three-quarters cents, or about that sum.

Lot No. 11, containing fifty-nine acres and thirteen hundredths of an

acre, or thereabout, to James Sprowl, for the sum of one thousand nine hundred and eighty dollars and eighty-five cents, or about that sum.

Lot No. 12, containing twenty-six acres and two hundredths of an acre, or thereabouts, to Thomas J. Walling, for the sum of eight hundred and fifty-eight dollars and sixty-six cents, or about that sum.

Lot No. 13, containing forty-nine acres and forty-two hundredths of an acre, or thereabouts, to Amos Walling, for the sum of one thousand four hundred and fifty-seven dollars and eighty-eight cents, or about that sum.

Lot No. 14, containing forty acres and thirty-five hundredths of an acre, or thereabout, to Joseph Carhart, for the sum of two hundred and eighty-two dollars and forty-five cents, or about that sum.

Lot No. 15, containing sixty one acres and thirty-four hundredths of an acre, or thereabout, to Horatio Kearny, for the sum of seven hundred and fifty-one dollars and forty-one cents and a half, or about that sum; amounting, in the whole, to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, or about that sum—

Who were duly reported by said commissioners to the said orphan's court, in the term of January, eighteen hundred and thirty, as the purchasers of said property; and thereupon the said orphan's court, in the said term of January, eighteen hundred and thirty, duly approved and confirmed said sales, and ordered the said commissioners to make deeds therefor to the purchasers respectively.

And whereas, after the said sale, some of the said purchasers parted with their interest, in whole or in part, for a valuable consideration, in the property thus purchased by them as aforesaid; in consequence whereof some of the deeds were made and executed, not to the purchaser or purchasers at the said commissioners' sale, but to the person or persons who held under such purchaser or purchasers; that is to say, the deed for lot No. 4, purchased at said commissioners' sale by Jonathan Tilton, was made by the said commissioners to Joseph R. Walling; the deeds for lots Nos. 1, 5, 6, and 10, purchased at said commissioners' sale by Ezra Osborn, and for lots Nos. 7 and 9, purchased at said commissioners' sale by Isaac K. Lippincott, and for lot No. 8, purchased at said commissioners' sale by Richard C. Burrowes, were made by said commissioners to John I. Taylor; the deed for lot No. 13, purchased at said sale by Amos Walling, was made by said commissioners to Amos Walling, Douglass E. Stout, and William Walling; and the deed for lot No. 11, purchased at said commissioners' sale by James Sprowl, was made to James Sprowl, John Sprowl, and Joseph Sprowl, which is alleged to be irregular:

And whereas the said deeds were made and accepted under the full impression and belief, on the part of the said commissioners and purchasers, that such substitution was frequently made, and that the same was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself:

And whereas it is represented that some, or all, the commissioners

were, at the time of, or shortly after, the said sale by the said commissioners, in some way interested in said property, or some part thereof, by reason of all which, and other alleged informalities and irregularities in the said sale and conveyances of the said property by the said commissioners, doubts have arisen respecting the title to all of said lots:

And whereas it is represented that the said sale by the said commissioners, and the conveyances by them subsequently made, were made in good faith, and for a fair, just, and full consideration; which consideration has all been honestly and fully paid to the persons lawfully entitled to receive the same; and whereas, since the said sale by the said commissioners, great and valuable improvements have been made and put upon the said property, and that the same is now in the hands of many innocent owners and occupants, holding under the said deeds from the said commissioners, and it is expedient and just to have the difficulties, if any exist, removed, and the titles, if they be defective, confirmed by legislative enactment; now, therefore, for the purpose of quieting the titles of said purchasers, and all who hold under the said commissioners, either directly or by subsequent conveyance or conveyances—

Section 1. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, That the several deeds so given by the said commissioners for the said several lots shall be deemed and taken, and the same are hereby declared to be, valid and effectual in law, to convey the estate therein and thereby intended to be conveyed; and that the said deeds, or any of them, and all subsequent conveyances of the said estate, or any part thereof, shall not be impeached in any court whatever for any such alleged interest in the said commissioners, or any of them, in the property so sold by them as aforesaid, or for any alleged defect or informality in the execution of the powers of the said commissioners, or in the proceedings of the said orphan's court; and that the said deeds, or any of them, shall not be invalidated or impeached upon any other ground than that of absolute, direct, and actual fraud, upon the part of the said commissioners.

Passed February 14th, 1844, as by reference to the said act will more fully appear.

And this defendant in further answering says, that to the best of his knowledge, information, and belief, there was no fraud, either absolute, direct, or actual, or any fraud whatever, on the part of the said commissioners, or any, or either of them, in and about the partition and sale of said real estate, or in or about the execution and delivery of the deeds therefor, or any of them, or in or about any other matter or thing relating to the partition and sale of said real estate, or in or about executing or delivering the said deeds therefor, but that every thing in and about the said partition and sale relating thereto was fair; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall award, and humbly prays to be hence dis-

missed with his reasonable costs and charges in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor and of counsel with defendant.

UNITED STATES OF AMERICA,
District of New Jersey, ss.

Richard C. Burrows, of said district, being duly sworn according to law, deposeth and saith, that the matters and things set forth in the foregoing supplemental answer, so far as they are stated as of or relate to his own knowledge, acts, and deeds, are true, and so far as they are stated upon the information of, or relate to the acts and deeds of others, he believes them to be true.

RICHARD C. BURROWS.

Sworn and subscribed this 13th June, 1844, before me, a commissioner of said court.

DANIEL B. RYALL.

Third circuit court of the United States, for the New Jersey district.

In equity.

Between JOHN I. TAYLOR, Edward Taylor, and others, defendants,
and
THOMAS KEARNEY and others, complainants.

The supplemental answer of Edward Taylor, by leave of the court first had and obtained for that purpose, to the amended bill of complaint of Thomas Kearney, Anne E. Kearny, Catharine Karney, George C. Thomas and Anastasia, his wife, and Horatio W. Kearney, complainants, against them, the said John I. Taylor, Edward Taylor, and others.

This defendant in this his supplemental answer says, that since the filing of this original answer in this cause, to wit, on the fourteenth day of February, eighteen hundred and forty-four, the counsel and general assembly of the State of New Jersey, passed a private act of the said council and general assembly of [the] State of New Jersey, entitled "An act to confirm the sales of the real estate, whereof Edmund Kearney, deceased, late of the county of Monmouth, died seized," of which said act the following is a true copy, viz.: "An act to confirm the sales of the real estate whereof Edmund Kearney, deceased, late of the county of Monmouth, died seized."

Whereas the orphan's court of the county of Monmouth, in this State, in the term of April, eighteen hundred and twenty-nine, upon the petition of Daniel Holmes, appointed James Hopping, Edward Taylor, and Leonard Walling, commissioners to divide the real estate whereof Edmund Kearney, deceased, late of said county of Monmouth, died seized, among the persons entitled thereto; upon which application such proceeding were had that, in the term of July, eigh-

teen hundred and twenty-nine, the said orphan's court ordered said commissioners to sell said real estate; under which last mentioned order the said commissioners, on the third and fourth days of November, eighteen hundred and twenty-nine, sold said real estate, consisting of a tract of land containing about seven hundred and eighty-one acres, situate in the township of Middletown, in the county of Monmouth aforesaid, in parcels, to the following persons, viz.:

Lot No. 1, containing two hundred and twenty-four acres and eighty-two hundredths of an acre, or thereabout, to Isaac K. Lippincott, for the sum of six thousand seven hundred and forty-four dollars and sixty cents, or about that sum.

Lot No. 2, containing fifty-six acres and forty-two hundredths of an acre, or thereabout, to Thomas Carhart, for the sum of one thousand five hundred and ninety-three dollars and eighty-six cents, or about that sum.

Lot No. 3, containing thirty-two acres and eighty-five hundredths of an acre, or thereabout, to Amos Walling, for the sum of eight hundred and seventy-eight dollars and seventy-three and three-quarters of a cent, or about that sum.

Lot No. 4, containing eighteen acres and forty-three hundredths of an acre, or thereabout, to Jonathan Tilton, for the sum of seven hundred and nine dollars and fifty-five and a half cents, or about that sum.

Lot No. 5, containing fifty-nine acres and fifty-two hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of one thousand three hundred and thirty-nine dollars and twenty cents, or about that sum.

Lot No. 6, containing fifty-six acres and eighty-four hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of seven hundred and fifty-three dollars and thirteen cents, or about that sum.

Lot No. 7, containing forty-eight acres and forty-six hundredths of an acre, or thereabouts, to Isaac K. Lippincott, for the sum of one thousand two hundred and twenty-three dollars and sixty-one cents, or about that sum.

Lot No. 8, containing twenty-four acres and eleven hundredths of an acre, or thereabouts, to Richard C. Burrows, for the sum of one thousand and thirty-six dollars and seventy-three cents, or about that sum.

Lot No. 9, containing seven acres and thirty-four hundredths of an acre, or thereabouts, to Isaac K. Lippincott, for the sum of one hundred and thirty-five dollars and seventy-nine cents, or about that sum.

Lot No. 10, containing sixteen acres and fifty-seven hundredths of an acre, or thereabouts, to Ezra Osborn, for the sum of one hundred and ninety-four dollars and sixty-nine and three-quarter cents, or about that sum.

Lot No. 11, containing fifty-nine acres and thirteen hundredths of an acre, or thereabouts, to James Sproul, for the sum of one thousand nine hundred and eighty dollars and eighty-five cents, or about that sum.

Lot No. 12, containing twenty-six acres and two hundredths of an

acre, or thereabouts, to Thomas J. Walling, for the sum of eight hundred and fifty-eight dollars and sixty-six cents, or about that sum.

Lot No. 13, containing forty-nine acres and forty-two hundredths of an acre, or thereabouts, to Amos Walling, for the sum of one thousand four hundred and fifty-seven dollars and eighty-eight cents, or about that sum.

Lot No. 14, containing forty acres and thirty-five hundredths of an acre, or thereabouts, to Joseph Carhart, for the sum of two hundred and eighty-two dollars and forty-five cents, or about that sum.

Lot No. 15, containing sixty-one acres and thirty-four hundredths of an acre, or thereabouts, to Horatio Kearny, for the sum of seven hundred and fifty-one dollars and forty-one cents and a half, or about that sum; amounting in the whole to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, or about that sum; who were duly reported by said commissioners to the said orphan's court, in the term of January, eighteen hundred and thirty, as the purchasers of said property; and thereupon the said orphan's court, in the said term of January, eighteen hundred and thirty, duly approved and confirmed said sale, and ordered the said commissioners to make deeds therefor to the purchasers respectively. And whereas, after the said sale some of the said purchasers parted with their interest, in whole or in part, for a valuable consideration, in the property thus purchased by them as aforesaid, in consequence whereof some of the deeds were made and executed, not to the purchaser or purchasers at the said commissioners' sale, but to the person or persons who held under such purchaser or purchasers; that is to say, the deed for lot No. 4, purchased at said commissioners' sale by Jonathan Tilton, was made by the said commissioners to Joseph R. Walling; the deeds for lots No. 5, 6, and 10, purchased at said commissioners' sale by Ezra Osborn, and for lots No. 7 and 9, purchased at said commissioners' sale by Isaac K. Lippincott, and for lot No. 8, purchased at said commissioners' sale by Richard C. Burrowes, were made by said commissioners to John I. Taylor; the deed for lot No. 13, purchased at said sale by Amos Walling, was made by said commissioners to Amos Walling, Douglass E. Stout, and William Walling; and the deed for lot No. 11, purchased at said sale by James Sproul, was made to James Sproul, John Sproul, and Joseph Sproul, which is alleged to be irregular:

And whereas said deeds were made and accepted under the full impression and belief, on the part of the said commissioners and purchasers, that such substitution was frequently made, and that the same was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself; and whereas it is represented that some or all the said commissioners were at the time of, or shortly after, the said sale by the said commissioners, in some way interested in said property or some part thereof; by reason of all which, and other alleged informalities and irregularities in the said sale and conveyances of the said property by the said commissioners, doubts have arisen respecting the title to all of said lots; and whereas it is represented that the said sale by the said commissioners, and the conveyances by them subsequently

made, were made in good faith, for a fair, just, and full consideration, which consideration has all been honestly and fully paid to the persons lawfully entitled to receive the same; and whereas, since the said sale by the said commissioners, great and valuable improvements have been made and put upon the said property, and that the same is now in the hands of many innocent owners and occupants, holding under the said deeds from the said commissioners, and it is expedient and just to have the difficulties, if any exist, removed, and the titles, if they be defective, confirmed by legislative enactment; now, therefore, for the purpose of quieting the titles of said purchasers, and of all who hold under the said commissioners, either directly or by subsequent conveyance or conveyances—

Section 1. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, that the several deeds so given by the said commissioners for the said several lots shall be deemed and taken, and the same are hereby declared to be valid and effectual in law, to convey the estate therein and thereby intended to be conveyed, and that the said deeds or any of them, and all subsequent conveyances of the said estate, or any part thereof, shall not be impeached in any court whatever for any such alleged interest in the said commissioners or any of them, in the property so sold by them as aforesaid, or for any alleged defect or informality in the execution of the power of the said commissioners, or in the proceedings of the said orphan's court; and that the said deeds, or any of them, shall not be invalidated or impeached upon any other ground than that of absolute, direct, and actual fraud on the part of the said commissioners.

Passed February 14, 1844, as by reference to the said act will more fully appear.

And this defendant in further answering says, so far as he is concerned, positively, and so far as the other commissioners were concerned, to the best of his knowledge, information, and belief, that there was no fraud, either absolute, direct, or actual, or any fraud whatever on the part of the said commissioners, or any or either of them, in and about the partition and sale of said real estate, or in or about the execution and delivery of the deeds therefor, or in or about any other matter or thing relating to the partition and sale of said real estate, or executing or delivering the said deeds therefor, but that everything in and about the said partition and sale relating thereto was fair. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf wrongfully sustained.

P. VREDENBURGH,
Solicitor, and of counsel with defendant.

UNITED STATES OF AMERICA,
District of New Jersey, to wit:

Edward Taylor, of said district, being duly sworn according to law, deposeth and saith, that the matters and things set forth in the foregoing

supplemental answer, so far as they are stated as of, or relate to, his own knowledge, acts, and deeds, are true; and so far as they are stated upon the information of, or relate to, the acts and deeds of others, he believes them to be true.

EDWARD TAYLOR.

Sworn and subscribed this thirteenth day of June, 1844, before me, a commissioner of said court.

DANIEL B. RYALL.

Circuit court, United States, third circuit, for the district of New Jersey.

Between THOMAS KEARNY et al.
and
JOHN I. TAYLOR et al. } In equity.

Upon motion made in this cause ex parte by Mr. Sullivan for the complainants, for leave to amend the bill of complaint in this cause, by striking out the special prayer thereof, it appearing that the defendants have not as yet put in any answer to said bill in this cause, but have obtained further time to put in the same, viz., sixty days from the fifteenth day of said March, and it appearing that the complainants are desirous of amending their bill by striking out the special prayer thereof, it is ordered, that the complainants have leave forthwith to amend their said bill by striking out the special prayer thereof, but that notice of said amendment be given to the defendant's solicitor forthwith; reserving to said solicitor the right of moving for the rescindment of this order, if good cause therefor can be shown within twenty days after notice of said amendment, and of this order.

PH. DICKERSON, *Judge.*

Replications filed in usual form.

To the judges of the circuit court of the United States, for the district of New Jersey.

John I. Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Theresa Walling, Catharine Walling, Adeline Walling, Washington Walling, Catharine Holmes, Edward Hopping, and John Hopping, sons of James Hopping, deceased, and citizens, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, John Mechaux and Elizabeth, his wife, Thomas Field and Martha, his wife, Sarah Taylor and Huldah Taylor, Gilbert Van Mater and Sarah, his wife, Samuel Holmes and Sarah, his wife, of the county of Monmouth, of the State of New Jersey, and citizens of the said State of New Jersey, and Oliver Vanderbilt, of the State of New York, bring this, their cross bill, by permission of the court, against Thomas Kearny and Catharine Kearny, of Clinton, in the State of Mississippi, and citizens of said State, Anna E. Kearny, of New Haven, in the State of Connecticut, and a citizen of said State, Anastasia K. Thomas

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and George C. Thomas, her husband, of Detroit, in the State of Michigan, and citizens of said State of Michigan, and Horatio N. Kearny, of Zanesville, in the State of Ohio, and a citizen of said State of Ohio, and Daniel Holmes, Edward Taylor, Richard C. Burrowes and Mary, his wife, of New Jersey, and citizens of said State of New Jersey.

And thereupon your orators complain and say, that on or about the fifteenth day of October, eighteen hundred and forty-one, part of the said defendants in his cross bill, viz., Thomas Kearny, Anne E. Kearny, Catharine Kearny, and Horatio N. Kearny, George C. and Anastasia Thomas, filed in said court their original bill of complaint against your said orators, John J. Taylor, as well as also against Edward Taylor, Daniel Holmes, Catharine Walling, Adeline Walling, Washington Walling, children of Leonard Walling, deceased, Sarah Holmes and Samuel Holmes, her husband, and Catharine Holmes, the said Sarah and Catharine Holmes being sisters and heirs-at-law of the late John W. Holmes, deceased, and John Hopping, son of James Hopping, deceased, Sarah Leonard and her husband, Thomas Leonard, and Mary Frost and her husband, James Frost, the said Sarah and Mary being daughters of said James Hopping, and Samuel Taylor, son of the late Joseph Taylor, deceased, Hannah Osborn, daughter of said late J seph Taylor, and wife of said Ezra Osborn, and Mary Burrowes, daughter of said Joseph Taylor, and her husband, Richard C. Burrowes, and Elizabeth Mechaux, daughter of said Joseph Taylor, deceased, and her husband, John Mechaux, and Martha, daughter of said Joseph, and her husband, Thomas Field, and Sarah Taylor and Huldah Taylor, daughters of said late Joseph Taylor, and Sarah, daughter of said Joseph, and her husband, Gilbert Van Mater, and afterwards amended their bill by adding Oliver Vanderbilt as a party, and also in some other particulars; which said original bill stated that Edmund Kearny, late of said county of Monmouth, died intestate on the 30th December, 1822, seized of a tract of land situated at Key Port, in the township of Middletown, in said county of Monmouth, containing nine hundred and sixty acres, more or less, and which estate is represented on a map, a copy of which is annexed to said original bill, leaving the said Thomas Kearny, Anne E. Kearny, Catharine Kearny, Anastasia and Horatio, and their brothers, James P. Kearny and John Kearny, and their sister, Mary Kearny, the only children and heirs-at-law of said Edmund Kearny, and that the said original bill further states that the said John Kearny died without issue, and intestate, before the 15th day of April, 1829, and that the said Mary Kearny died without issue, and intestate, on the 25th day of December, 1836; and that the said James P. Kearny, on the 15th day of April, 1829, for the consideration of sixteen hundred dollars, conveyed his undivided interest in said real estate to Daniel Holmes and John W. Holmes, and that the said Daniel Holmes, for himself and said John W. Holmes, in the term of April, 1829, applied to the orphan's court of said county of Monmouth for a partition of said real

estate, some of the said children of the said Edmund Kearny then being minors; and that upon such application such proceedings were afterwards had in said orphan's court, that Leonard Walling, James Hopping, and Edward Taylor, were appointed by said court, in April term, 1829, commissioners to divide said real estate; and afterwards such proceedings were further had on said application that the said orphan's court, in July term, 1829, ordered the said commissioners to make sale of said real estate, and that the said commissioners, in pursuance of said order, sold said real estate in parcels, on the third and fourth days of November, 1829, as follows, viz:

Lot No. 1, on said map, containing 224 $\frac{8\,2}{1\,0\,0}$ acres, to Isaac K. Lippincott, $30 per acre - - -	$6,744 60
Lot No. 2, containing 56 $\frac{4\,8}{1\,0\,0}$ acres, to Thomas Carhart, for $28 25 per acre - - - - -	1,593 86½
Lot No. 3, containing 32 $\frac{8\,5}{1\,0\,0}$ acres, to Amos Walling, for $26 75 per acre - - - - -	878 73¾
Lot No. 4, containing 18 $\frac{4\,3}{1\,0\,0}$ acres, to Jonathan Tilton, $38 50 per acre - - - - -	709 55½
Lot No. 5, containing 59 $\frac{5\,2\,5}{1\,0\,0}$ acres, to Ezra Osborn, esq., for $22 50 per acre - - - - -	1,339 20
Lot No. 6, containing 56 $\frac{8\,4}{1\,0\,0}$ acres, to Ezra Osborn, esq., for $13 25 per acre - - - - -	753 13
Lot No. 7, containing 48 $\frac{4\,6\,6}{1\,0\,0}$ acres, to Isaac K. Lippincott, for $25 25 per acre - - - - -	1,223 61½
Lot No. 8, containing 24 $\frac{1\,1}{1\,0\,0}$ acres, to Richard C. Burrowes, for $43 per acre - - - -	1,036 73
Lot No. 9, containing 7 $\frac{3\,4}{1\,0\,0}$ acres, to Isaac K. Lippincott, for $18 50 per acre - - - - -	135 79
Lot No. 10, containing 16 $\frac{5\,7}{1\,0\,0}$ acres, to Ezra Osborn, for $11 75 per acre - - - - -	194 69¾
Lot No. 11, containing 59 $\frac{1\,9}{1\,0\,0}$ acres, to James Sprowl, for $33 50 per acre - - - - -	1,980 85½
Lot No. 12, containing 26 $\frac{1\,2}{1\,0\,0}$ acres, to Thomas J. Walling, for $33 per acre - - - - -	858 56
Lot No. 13, containing 49 $\frac{4\,2}{1\,0\,0}$ acres, to Amos Walling, for $29 50 per acre - - - - -	1,457 88
Lot No. 14, containing 40 $\frac{8\,5}{1\,0\,0}$ acres, to Joseph Carhart, for $8 per acre - - - - -	282 45
Lot No. 15, containing 61 $\frac{8\,4}{1\,0\,0}$ acres, to Horatio Kearny, for $12 25 per acre - - - - -	751 41½
	$19,941 19

Amounting in the whole to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, and made report thereof to said orphan's court, in the term of January, 1830, which said or-

phan's court, in said January term, 1830, approved said sales, and ordered the said commissioners to execute good and sufficient conveyances in the law for the said lands so sold accordingly.

The said original bill further states that the said commissioners, pretending to act under the said last mentioned order, executed the deed for lots Nos. 5, 6, 7, 8, 9, and 10, to John I. Taylor, instead of the persons named in their report. The said original bill further states that Leonard Walling and James Hopping, two of the said commissioners, died before the filing of said original bill. The said original bill further states that the said James Hopping and Leonard Walling were interested in some parts of said lots, Nos. 5, 6, 7, 8, 9, and 10, at the time of said sale or afterwards.

And said bill further charges divers acts of fraud on the part of the said commissioners and purchasers in relation to said sale, and divers irregularities in the proceedings of the said orphan's court.

The said original bill further states that a large number of dwellings and other valuable improvements have been put upon said lots, Nos. 5, 6, 7, 8, 9, and 10, since the said sale, by the said purchasers and others holding under them.

And your orators further show that the object and prayer of said original bill and amendments were and are to obtain a discovery of the facts charged in said original bill and amendments, and to obtain an injunction against the defendants therein from committing any waste on said lots, Nos. 5, 6, 7, 8, 9, and 10, and to restrain them from selling any portion of the same; and that the said complainants in said original bill and amendments may have such further relief as the nature of the case might require.

And your orators further show that such proceedings were had in this court upon such original bill and amendments, that afterwards the said defendants in said original bill and amendments, to wit, John I. Taylor, Ezra Osborn, John Hopping, Edward Hopping, Theresa Walling, Isaac K. Lippincott, Oliver Vanderbilt, Richard C. Burrowes, Daniel Holmes, and Edward Taylor, answered, admitting the sale of lots Nos. 5, 6, 7, 8, 9, and 10, by the said commissioners, as in their report to said orphan's court is mentioned; and that the deed therefor was executed to the said John I. Taylor, but each and all of them specially and positively denying any actual fraud in any of said proceedings, and sales and deeds, and all fraud and acts of fraud charged in the said bill or amendments; and also denying that the said commissioners, or any or either of them, were in any way interested in any part of the said real estate at the time of said sale; and also denying any legal or constructive fraud in relation to said sales or deeds, so far as they respectively knew or believed.

And your orators further show, that after the filing of the said answers to the original bill and amendments, and before replication thereto had been filed, to wit, on the fourteenth day of February, eighteen hundred and forty-four, the legislative council and general assembly of the State of New Jersey passed a private act of the said

legislative council and general assembly of the State of New Jersey, of which the following is a true copy:

"STATE OF NEW JERSEY."

"An act to confirm the sales of real estate, whereof Edmund Kearny, deceased, late of the county of Monmouth, died, seized.

Whereas, the orphan's court of the county of Monmouth, in this State, in the term of April, eighteen hundred and twenty-nine, upon the petition of Daniel Holmes, appointed James Hopping, Edward Taylor, and Leonard Walling, commissioners, to divide the real estate whereof Edmund Kearny, deceased, late of said county of Monmouth, died seized, among the persons entitled thereto, upon which application such proceedings were had that, on the term of July, eighteen hundred and twenty-nine, the said orphan's court ordered said commissioners to sell said real estate; under which last mentioned order the said commissioners, on the third and fourth days of November, eighteen hundred and twenty-nine, sold said real estate, consisting of a tract of land containing about seven thousand and eighty-one acres, situated in the township of Middletown, in the county of Monmouth, aforesaid, in parcels, to the following persons, viz., (here follows the same statement of purchasers as above made,) who were duly reported by said commissioners to the said orphan's court, in the term of January, eighteen hundred and thirty, as the purchasers of said property; and, therefore, the said orphan's court, in the said term of January, eighteen hundred and thirty, duly approved and confirmed said sales, and ordered the said commissioners to make deeds therefor to the purchasers respectively:

And whereas, after the said sale some of the said purchasers parted with their interest, in whole or in part, for a valuable consideration in the property then purchased by them as aforesaid, in consequence whereof some of the deeds were made and executed, not to the purchaser or purchasers at the said commissioners' sale, but to the person or persons who held under such purchaser or purchasers; that is to say, the deed for lot No. 4, purchased at said commissioners' sale by Jonathan Tilton, was made by the said commissioners to Joseph R. Walling; the deeds for lots Nos. 5, 6, and 10, purchased at said commissioners' sale by Ezra Osborn; and for lots Nos. 7 and 9, purchased at said commissioners' sale by Isaac K. Lippincott; and for lot No. 8, purchased at said commissioners' sale by Richard C. Burrowes, were made by said commissioners to John I. Taylor; the deed for lot No. 13, purchased at said sale by Amos Walling, was made by said commissioners to Amos Walling, Douglass E. Stout and William Walling; and the deed for lot No. 11, purchased at said sale by James Sproul, was made to James Sproul, John Sproul, and Joseph Sproul, which is alleged to be irregular:

And whereas the said deeds were made and accepted under the full impression and belief, on the part of the said commissioners and purchasers, that such substitution was frequently made, and that the same

was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself:

And whereas it is represented that some or all of the said commissioners were at the time of, or shortly after, the said sale by the said commissioners, in some way interested in said property, or some part thereof; by reason of all which, and other alleged informalities and irregularities in the said sale and conveyances of the said property by the said commissioners, doubts have arisen respecting the title to all of said lots. And whereas it is represented that the said sale by the said commissioners, and the conveyances by them subsequently made, were made in good faith, and for a fair, just, and valuable consideration, which consideration has all been honestly and fully paid to the persons lawfully entitled to receive the same:

And whereas, since the said sale by the said commissioners, great and valuable improvements have been made and put upon the said property, and that the same is now in the hands of many innocent owners and occupants holding under the said deeds from the said commissioners, and it is expedient and just to have the difficulties, if any exist, removed; and the titles, if they be defective, confirmed by legislative enactment:

Now, therefore, for the purpose of quieting the titles of said purchasers, and of all who hold under the said commissioners, either directly or by subsequent conveyance or conveyances :

Section 1. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, that the several deeds so given by the said commissioners for the said several lots shall be deemed and taken, and the same are hereby declared to be valid and effectual in law, to convey the estate thereon and thereby intended to be conveyed; and that the said deeds, or any of them, and all subsequent conveyances of the said estate, or any part thereof, shall not be impeached in any court whatever, for any such alleged interest in the said commissioners, or any of them, in the property so sold by them as aforesaid, or for any alleged defects or informality in the execution of the powers of the said commissioners, or in the proceedings of the said orphan's court; and that the said deeds, or any of them, shall not be invalidated or impeached upon any other ground than that of absolute, direct, and actual fraud, on the part of said commissioners.

"Passed February 14, 1844."

As by reference to said act will more fully appear.

And your orators further show, that the Edmund Kearny and the real estate, and the proceedings in the orphan's court, and the commissioners, and the sale, and the purchasers, and the deeds named in said private act, are the same that are named and referred to respectively in the said original bill, amendments, and answers; and that the said legislative council and general assembly, in and by said act, intended to quiet the titles of the purchasers at said sales, and those holding under them; and that in and by the said act the said deed to John I.

Taylor, and also all the other said deeds of said commissioners, were made valid and effectual in law to convey the estate therein and thereby intended to be conveyed, and incapable of being impeached in any court whatever, for any alleged interest of the said commissioners, or any of them, at the time of said sale or afterwards, in the property so sold by them as aforesaid, or for any alleged defect or informality in the execution of the powers of the said commissioners, or in the proceedings of the said orphan's court.

And your orators further show, that the said Daniel Holmes, Edward Taylor, Richard C. Burrowes and Mary, his wife, will not consent to be made parties complainants on this bill.

To the end, therefore, that the defendants in this suit may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and corporal oaths, and according to the best of their respective knowledge, information, remembrance, and belief, full, true, direct, and perfect answers make to each of the several interrogatories hereinafter numbered and set forth; that is to say:

1. Whether the defendants in this cross bill, Thomas Kearny, Catharine Kearny, Anne E. Kearny, Anastasia K. Thomas and George C. Thomas, her husband, and Horatio N. Kearny, did not file their original bill and amendments in this court, and the defendants in said original bill and amendments file their answer, stating as herein set forth.

2. Whether the legislative council and general assembly of the State of the State of New Jersey did not pass a private act of their body, a true copy of which is set forth in this bill at the time in this bill stated, and after the filing of said answers.

3. Whether the Edmund Kearny, the real estate, and the proceedings in said orphan's court, and the commissioners, and the sale, and the purchasers, and the deeds named in said private act, are not the same named and referred to in the said original bill, and amendments, and answers, (and that your orators may set up said private act as a defence against said original bill and amendments thereto, in the nature of a plea puis darien continuance, or otherwise. And that your orators may have the benefit of said private act as a matter of defence to said original bill and amendments, and that the said private act may be declared a good defence in said original suit, except so far as the said deed of the said commissioners may be impeached or invalidated in said original suit, on the ground of absolute, direct, and actual fraud on the part of the said commissioners; and that your orators may have such other and further relief, in the nature of defence to said original suit, as may appear to be just and agreeable to equity and good conscience, may it please the court to grant to your orators the writ of subpœna of the United States of America, to be issued out of this court, directed to the said Thomas Kearny, Catharine Kearny, Anne E. Kearny, Anastasia K. Thomas and George C. Thomas, her husband, and Horatio N. Kearny, viz., John I. Taylor, Ezra Osborn, John Hopping, Edward Hopping, Theresa Walling, Isaac K. Lippincott,

Oliver Vanderbilt, Daniel Holmes, Edward Taylor, Richard C. Burrowes and Mary, his wife, commanding them, and each of them, by a certain day therein mentioned, and under a certain penalty therein to be inserted, to be and appear before the judges of this court in equity, and then and there to answer the above interrogatories, and to abide such decree herein as shall be agreeable to equity and good conscience; and your orators will ever pray.

P. VREDENBURGH, JR.,
Solicitor and of counsel with complainants.

Note.—All the defendants are required to answer the interrogatories numbered, respectively, 1, 2, and 3.

P. VREDENBURGH, JR.,
Solicitor and of counsel with complainants.

The oath by one of complainants is in common form.

Circuit court of the United States, third circuit, for the district of New Jersey. In equity.

Between THOMAS KEARNY, Catharine K. Jordan and Thomas Jordan, her husband, in her right, Anne E. K. Chesebrough, and Anastasia K. Thomas, and others, defendants in cross bill,
and
JOHN I. TAYLOR, Isaac K. Lippincott, Ezra Osborn, Oliver Vanderbilt, John Hopping, Teresa Walling, and others, complainants in cross bill.

The joint and several answers of Catharine K. Jordan and Thomas Jordan, her husband, in her right, admitted to prosecute her claims and his in her right, by order of court. Anne K. Kearny, now Anne E. K. Chesebrough, allowed by order of court to prosecute her claims as a feme sole, under the ante-nuptial settlement executed, by and between her and her said husband, in due form of law, filed in this cause, and of Anastasia K. Thomas, formerly wife of George E. Thomas, junior, from whom she has been divorced by decree of a competent court in Ohio, filed in this cause by duly authenticated copy, and now thereupon admitted to prosecute her claims as a feme sole, unto the cross bill, or so much thereof as they are advised to answer, filed in this cause by John I. Taylor, Isaac K. Lippincott, Ezra Osborn, Oliver Vanderbilt, John Hopping, Teresa Walling, and others, in said cross bill mentioned, as by reference to the same on file will appear.

These defendants, now and at all times, saving and reserving unto themselves respectively, all and all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, untruths, deficiencies, and other imperfections in the said cross bill

contained, for a full and perfect answer thereunto, or to such parts thereof as they are severally advised it is at all necessary for them to answer, answering jointly, and severally, and respectively, first, to the first interrogatory numbered one, say, that these defendants, and other defendants who were original complainants in the original bill, did file their said original bill and amendments in this court. And the defendants to said original bill did file their answers to said original bill and amendments, to some extent, and in some respects, as in said cross bill is set forth; but in respect to many material facts stated in said original bill and amendments, the said complainants, in their said cross bill, have, by their omissions and misstatements therein, suppressed and misstated numerous facts and circumstances contained in said original bill and answers, as by reference to the same will appear; and therefore these defendants pray leave to refer, and do refer, to said original and amended bill, and all the answers thereto, for greater certainty in respect to the same, as of right these defendants may, according to law and equity.

And these defendants, in said cross bill, further answering, respectively answer to the interrogatory numbered two, and say that the legislative council and general assembly of the State of New Jersey did not pass in due form of legislative proceeding the private act of which a copy is set forth in said cross bill, at the time in said cross bill stated; but these defendants admit that an act of the same import, purporting to be such a private act, was passed at such time, but for a true copy of such act these defendants now and at all times refer to the record thereof for greater certainty, or to a full and exact copy of such record duly authenticated, which the said complainants in said cross bill are, if they rely on such private act, bound and required by due course of law to produce here before the court at the hearing of this cause.

And these defendants further answering, respectively answer to the interrogatory numbered three, and say they do admit that the Edmund Kearney, the real estate, and the proceedings in said orphan's court, and the commissioners, and the sales, and the purchasers, and the deed of the commissioners to John I. Taylor, named in said private act, are the same named and referred to in said original bill, and amendments, and answers, but for greater certainty as to the premises these defendants now and at all times refer to the record thereof as set forth in the original bill, and to all the statements respecting the same contained in and set forth in said original bill, and amendments and answers thereto.

And these defendants do further answer, to show why said complainants in said cross bill should not have the relief thereby prayed, and say, that at the time the said private act was passed, viz., the 14th February, 1844, and for a long time before, viz., ever since the 9th of March, 1841, an act of the legislature of the State of New Jersey, providing by certain special proceedings for the quieting and settling of the conflicting claims of the parties to the original suit herein, and of all persons claiming, or who might hereafter claim, the lands and estate

which constitute the subject of this suit, either as the heirs or assigns of the heirs of said Edmund Kearny, deceased, or as purchasers under the said deed of said commissioners to said John I. Taylor, was in full force between, and obligatory upon, said parties as a private act, and still is in full force in said State, and between the parties to this suit; that a petition was presented in January, 1841, in the legislative council of the said State of New Jersey, addressed to the legislature of said State, by and on behalf of those who claimed title to the lands and estate in said cross bill mentioned, under said commissioners' said deed to said John I. Taylor, and was referred to the judiciary committee of which Peter Vredenburgh, esq., was a member, and at the same time the attorney and counsel of said claimants in the actions at law mentioned in said original bill and amendments, of which one defended by said Oliver Vanderbilt is still pending; and thereupon a bill, in substance and to the effect following, was reported in said legislative council, viz: "Whereas commissioners authorized by orphan's court to sell the estates of minors have executed conveyances to some person or persons other than the person or persons to whom the tract or tracts of land were struck off by the desire or with the consent of the person or persons to whom the said land was struck off as aforesaid, and the purchase money paid: Be it enacted, that all such conveyances shall be as good and effectual and valid in the law as if made to the person or persons to whom the same was" (or were) "struck off."

And these defendants say, that no notice nor information of this proceeding in said legislature had been given to, nor in any way had reached, these defendants in cross bill, or any of the original complainants, until said bill was so reported to said legislative council by Peter Vredenburgh, esq., of said committee, and immediately thereupon the said original complainants, then lessors and plaintiffs in fact in said actions at law mentioned in said original bill, and then pending in the court, of which one was defended by said Oliver Vanderbilt, prepared and presented their remonstrance against said petition and proceedings thereon, which said petition and reported bill were referred thereupon to the same committee of which the honorable Peter Vredenburgh, esq., was a member, and at the same time attorney and of counsel for said petitioners; and after a full hearing of the parties upon said petition and remonstrance, and a further petition, by way of replication to said remonstrance, filed by said original defendants before said judiciary committee, Mr. Vredenburgh acting as counsel for said petitioners, at said hearing, the aforesaid reported bill was suppressed, and another bill, embracing to some extent the just, legal, and equitable rights of both parties, was reported by the chairman of said committee, and thereafter the same was referred to a joint committee of both branches of said legislature, and both parties were fully heard thereon before such joint committee; and the said petitioners appeared by their counsel, Mr. Vredenburgh and Mr. Dayton, and said remonstrants appeared also by their counsel, Mr. Sullivan, before said committee, to whom was referred also the said replication of said original defendants; and after a

full and patient hearing on the part of said committee, this substituted bill, with some alterations, was reported to said legislature substantially as set forth in the act of the legislature, passed on the 9th of March, 1841, with a recommendation as to the first section of said act, and the preamble thereto, that the same be passed, and it was passed, with the entire consent of all parties claiming under the title by descent from said Edmund Kearny, and by purchase under the said deed of the said commissioners to said John I. Taylor, that is to say, the preamble and the first section of said act of 9th March, 1841, set forth in said original bill in this suit.

And these defendants further answering say, that the said first section and preamble thereto of said act, was passed by said legislature, with the consent of said parties so claiming said estate as aforesaid, under the title, by descent and by purchase of said commissioners respectively, as a private act, to quiet and settle their conflicting claims according to the course therein prescribed. And these defendants aver, that by reason of the premises, and that the said act was awarded by said legislature as aforesaid, that is, the preamble and the first section thereof, upon the hearing and submission aforesaid, before the said joint committee of said legislature, and by reason that the said first section and the preamble thereto related only to private and particular rights and controversies in respect to certain private property to be settled as an exception out of the general common law, viz., by and according to the said act of the 9th March, 1841; that the preamble and the first section thereof, then and there constituted a private act, for the quieting and settling the aforesaid conflicting claims of the parties to the premises in question in this suit, and became, and was, and ever since has been, a contract in full force between said parties, viz., the said heirs, then living, of said Edmund Kearny, and their assigns, who may legally claim, under said deed of said commissioners to said John I. Taylor, of said lots numbered 5 to 10, bearing date 1st of April, 1830, fixing and establishing the legal mode of quieting their said conflicting claims, as if by an indenture of agreement to this effect, duly executed between said parties.

And these defendants further answering, to show cause why the relief prayed in said cross bill should not be granted to said complainants in said cross bill as aforesaid, say that a trial was had at the October term of this court, in the year 1842, of the action of ejectment, defended by said Vanderbilt, whose claim of title was derived under said deed of said commissioners to said John I. Taylor, and that said Vanderbilt, by his counsel, and under and according to the advice also of his warrantors of title to said premises, the said John I. Taylor, Isaac K. Lippincott, and the legal representatives of said James Hopping and Leonard Walling, and other grantors to said Vanderbilt of said premises, who, with others, were before the legislature as parties to the making and passing of said act of 9th March, 1841, did at said trial set up and maintain that, by legal force and effect of said first section of said act, the said deed of said commissioners to said John I. Taylor could, and

ought to be, legally sustained as a valid deed; and to this end the said Vanderbilt, under advice as aforesaid, then and there insisted that the said deed was within all the expressed provisions of said first section of said act and the preamble thereto, and thereupon produced some evidence to prove the same; accordingly and thereby, as these defendants in cross bill aver, the said Vanderbilt, one of the petitioners for said act, and the rest of the original defendants, did then and there admit, that the said first section of said act, with its preamble, was intended by said legislature to apply to the said deed of said commissioners to said John I. Taylor, agreeably to the prayer of the petition of said original defendants to said legislature for such act so as aforesaid obtained, and passed as a special means of quieting and settling the claims of said parties.

And these defendants further answering, to show cause why the said complainants in said cross bill should not have the relief prayed in their said bill, nor any relief at all, but, on the contrary, that the original complainants in said original and amended bill should and ought to have all the relief prayed for and proper, in the case made by the said original and amended bill, say, that the said complainants in said cross bill did, by their answers to said original and amended bill, set up and maintain the said preamble and first section of said act of 9th March, 1841, as an act authorizing and empowering them to maintain the validity of said commissioners' said deed to said John I. Taylor, as being excepted out of the general rule of law, settled by the ruling of the supreme court of said State, in the case of Den *vs.* Lambert, confirmed by the legislative construction implied by the enactment of said act of 9th March, 1841, and, in conformity with said first section, the said defendants by their answers insisted, that by reason of certain allegations therein contained, the said deed of said commissioners was made good and valid, according to the provisions of said first section of said act, and thereby the said original defendants, now complainants, in said cross bill, admitted that said first section of said act of 9th March, 1841, was in full force and legal effect, as such contract, between the parties respectively to this suit; and that they, said original defendants, could not legally sustain the validity of said commissioners' said deed to said John I. Taylor, save by force of said first section of said act, which said first section of said act could not, according to the due course of the common law established in said State by the constitution of said State, and the Constitution of the United States, have any legal force or effect on and between said parties, or their legal representatives and assigns, in the premises, without such hearing, and submission, and award, or free consent as aforesaid first being had before the said legislature.

And these defendants in cross bill further answering in the premises say, that the act of the 9th March, 1841, and the preamble, and the first section thereof, are now in full force and effect, and have not been repealed by said private act passed the 14th February, 1844, neither by express enactment nor by legal implication; and the said

private act, so passed the 14th February, 1844, so far as the same is in any respect inconsistent with the said act of 9th March, 1841, that is, with the preamble and first section thereof, was always and is now utterly void and of no legal effect between these parties, because the same is repugnant to the Constitution of the United States, that is, to the tenth section of the first article thereof, which ordains "that no State shall pass any law impairing the obligation of contracts."

And further answering, these defendants to said cross bill, who were complainants in the original and amended bill, say, that said private act, passed the 14th February, 1844, was obtained by and through the unfair management and false and fraudulent representations and concealments of the said original defendants, some or all of them, in the furtherance of their unlawful and fraudulent combination and conspiracy to defraud the original complainants of their inheritance, as in their said original and amended bill is set forth and charged.

And these defendants thereupon further say, that a petition was presented by complainants in cross bill to said legislature, in January, 1844, praying that such an act might be passed while this suit, then pending in this court, was and had been for a long time under notice for hearing upon bill and answers, that is, upon the original defendants' own statement of the case in defence against the charges of fraud in said bill and amendments charged, but no copy of said petition was ever served upon or shown by said petitioners to the said original complainants, nor their attorneys, solicitors, or counsel; but so privately and covertly was the application of said petitioners conducted, that no notice thereof came to the knowledge of said original complainants until a bill, in the very words and figures of said act, had finally passed to a third reading in the general assembly, and was laying on its table awaiting there its third reading; and in this stage of its progress, and before it had been taken up on its third reading, these defendants presented their remonstrance in said assembly, which said remonstrance is hereto annexed, and herein referred to [as] part of these answers; and therein these defendants and all the original complainants remonstrated against the passage of said act until the said remonstrants should have had an opportunity for a hearing before the legislature or a committee thereof, against the passage of said act; which said remonstrance, so presented, was read before the legislature, first, in the assembly, immediately on its coming to order, and before said act or bill of the 14th February, 1844, had been taken up on that day; and said remonstrance was also read in the legislative council on the same 14th day of February, 1844, immediately upon said council coming to order on that day, and printed copies thereof were previously distributed and laid before the members of said legislature in their places respectively. But the said assembly then and there forthwith laid the same remonstrance on its table without any further action thereon; and shortly after, viz., on the 14th day of February, 1844, took up said bill, and the said act was passed. Whereupon the original complainants, as soon thereafter as might be, presented their further remonstrance, hereto annexed and

referred to as part of these answers, averring that said act had been fraudulently obtained, and praying that the same might be repealed for that and other causes herein set forth; and thereupon the said legislature appointed a joint committee, before whom, as attorney in fact of said original complainants, Mr. Sullivan appeared, and remonstrated in their behalf against said act so passed as aforesaid, as being against the common and constitutional right of said complainants, and in violation of their rights as citizens of other States, inasmuch as thereby a special law was provided by said act for the trial of their legal rights, while the general law of the said State in respect to all citizens of said State, and of all other citizens of the United States, remained the same for the protection and assurance of their rights in precisely consimilar cases; and other matters in said remonstrance set forth were insisted upon. But said committee nevertheless reported against the prayer of said remonstrance and petition of the said original complainants, and so the repeal of the act was refused, and the same was enacted against their will and their unvarying opposition to the same; and these defendants do aver, that they, the said original complainants, never did assent to the passing of said act of 14th February, 1844, but have constantly opposed the same, and now and at all times do protest against it as being against their common right and against the common law established in said State by the 22d article of the constitution of said State, then, in 1844, in force, and against the constitution of said State since adopted and now in force therein, and against the Constitution of the United States, as herein shown and set forth.

And these defendants further answering say, that the said original defendants, some or all of them and their agents, made to the members of said legislature in their petition for the act of 14th February, 1844, and otherwise, divers false and fraudulent representations in respect to the records of the orphan's court and the proceedings of said commissioners, in order to mislead and deceive said members of said legislature, and thereby did deceive them; and these derendants pray that said original defendants, and now complainants in cross bill, may be required to produce the original petition on which said private act was granted.

And these defendants do aver, that the recital in the first clause of said preamble, wherein it is alleged that said commissioners sold said real estate in parcels to the following persons, viz., lot No. 5 and lot No. 6 and lot No. 10, to Ezra Osborn; and lot No. 7 and lot No. 9, to Isaac K. Lippincott; and lot No. 8, to Richard C. Burrowes, was and is false; and that the recital therein that the said Osborn, Lippincott, and Burrowes were duly reported by the said commissioners to the said orphan's court in the term of January, 1830, as the purchasers of said property, is also false; and these misrepresentations were fraudulently made to the members of said legislature by said petitioners and original defendants in this suit and their agents; and, moreover, these defendants do aver, that it appears by the answers of said original defendants in this suit, and by the said commissioners' said deed to said John I. Tay-

lor, and otherwise as herein shown, that said Osborn, Lippincott, and Burrowes were not in fact the purchasers of said lots, but that the real and true purchasers were the said James Hopping and Leonard Walling, two of said commissioners, and Joseph Taylor, guardian of certain of the minor children of said Edmund Kearny, deceased, and John Hopping, Ezra Osborn, and David S. Bray, for whose use and benefit the said three commissioners made and executed their said deed to said John I. Taylor, bearing date the 1st April, 1830, as their trustee, and so the fact stands admitted by said Lippincott in his answer to said original and amended bill; and the said John I. Taylor afterwards, on the 28th April, 1830, made and executed his deed bearing that date to said cestuis que trusts, thereby conveying to them, as tenants in common, seven-eighths of all the said lots, excepting and re-erving for special distribution among them certain twenty-four building lots, described and laid out upon a plan made and agreed to between said cestuis que trusts and said John I. Taylor, before the execution of said commissioners' said deed to said John I. Taylor, as such trustee, bearing date 1st April, 1830; all which appears by reference to said deeds, and the plan of the twenty-four lots and the other plans of the said estate, and the answers of said Lippincott and others, referred to; and all which is now referred to as part of these answers to said cross bill. And from these and other facts and circumstances shown by the answers of the original defendant in this suit, these defendants say that the said lots, 5, 6, 7, 8, 9, and 10, were not sold to said Osborn, Burrowes, and Lippincott, but to the said two commissioners and their associates; and the interest in the said lots of the said two commissioners, and of the said guardians, was fraudulently concealed from said orphan's court; and so these defendants aver that said Osborn, Burrowes, and Lippincott were not duly, but were falsely and fraudulently, reported as purchasers of said lots, and so the said recital in this respect was utterly false, and was fraudulently suggested and made to the members of said legislature by said petitioners and original defendants in this suit, some or all of them, in order to mislead and deceive the members of said legislature; and the fact that others, as aforesaid, were the real and true purchasers, was fraudulently concealed from the knowledge of said orphan's court, in order that the said commissioners and their associates, well knowing that said commissioners and said guardian could not legally be purchasers of said estate, might nevertheless have and enjoy the profit and gain thereof, to the loss and injury of said minors and others, original complainants in this suit. And this concealment from said court, which was in fact and in law an absolute, direct, and actual fraud on the part of said two commissioners, was also concealed from said legislature by said petitioners and said original defendants, and thereby said legislature were deceived and induced to pass said act of 14th February, 1844, without allowing these defendants opportunity to appear and oppose the same while on its passage.

And further, to show the falsehood and fraud of said commissioners in the premises, these defendants refer to their said deed to said John I.

Taylor, wherein they, said commissioners, state, by way of recital, in direct opposition to their sworn report of sales and purchasers, that said John I. Taylor was the true and actual purchaser, and that said Lippincott, Burrowes, and Osborn, acted as his agents in bidding for said lots; and yet the said Lippincott, in his answer, swears that said John I. Taylor was not the purchaser, but accepted said commissioners' said deed only as a trustee for said two commissioners and their associates; and all this fraudulent conduct of said commissioners upon the said orphan's court and said heirs was concealed from said court, and was also concealed from said legislature by said petitioners and others, original defendants in this suit, and the arrangement between said two commissioners and their associates, that said conveyance by said commissioners should be made to said John I. Taylor, in trust, as aforesaid, was in fact made before said sales were confirmed by said orphan's court, or even the commissioners' report of purchasers was made and sworn to, as will appear among other evidence from the proceedings, on the part of the said two commissioners and their associates, at the same court of common pleas, in January term, 1830, sitting as a court, to authorize the laying out of roads over the said estate, upon application of said commissioners and their associates, of which an authenticated copy is annexed, and referred to as a part of this answer. And these defendants say that the said orphan's court, acting thus under fraudulent concealments and misrepresentations of fact as to the identity of the true and real purchasers, could not and cannot be deemed as having duly confirmed said sales, as in said preamble of said private act is averred and recited, inasmuch as they had no power to order deeds to be executed to said Lippincott, Osborn, and Burrowes, if, as the said commissioners say, by way of recital, in their deed to said John I. Taylor, he was the purchaser; nor, if it were true, (as said Lippincott swears in his answer,) that said Taylor was not, but that said two commissioners and others, their associates, were, in fact the purchasers.

And again, these defendants specify, as a further instance of false and fraudulent representation on the part of said original defendants to said legislature, viz., that the said Lippincott, Osborn, and Burrowes, had "parted" with their interest in the property thus said to be purchased by them, and for a valuable consideration; and in said recital it is averred that, "in consequence thereof," the deeds ordered by the orphan's court to be executed to them, said Lippincott, Osborn, and Burrowes, were not executed to these persons, but to John I. Taylor, as their vendee; whereas, in truth and in fact, as it appears by said defendants' answers respectively in this suit, and otherwise, said lots, Nos. 5 to 10, were bought by said Burrowes, Osborn, and Lippincott, for a company of eight persons, to consist of said two commissioners, Leonard Walling, James Hopping, and said guardian, Joseph Taylor, Ezra Osborn, Isaac K. Lippincott, John Hopping, David S. Bray, and John I. Taylor, for whose use said commissioners' said deed to said John I. Taylor was made and executed, that is, for himself and the rest of said com-

pany, above named, to whom said John I. Taylor thereafter made a conveyance of seven-eighths of said lots, to be held in common with himself as owner of one-eighth, but reserving certain twenty four building lots to be distributed among the company, said deed of said commissioners being executed in April, 1830, and said conveyance of the said John I. Taylor, and the map of said twenty-four lots referred to in said conveyance, were all made in said April, all being in legal effect one act of said parties, and now referred to as part of these answers.

And further, these defendants say, the number of these shares, viz., eight, was agreed to upon the day of said sale, and the pretences set up in the answers of said original defendants, viz., that Holmes sold his share to Joseph Taylor, and Burrowes his to Osborn, and that Osborn sold his to John I. Taylor, and Stevens his to Leonard Walling, and Horatio N. Kearny his to David S. Bray, were devised, and are put forward by said original defendants, to conceal the true character of the transaction; all which is manifest from the deeds and plans of the premises and proceedings in the orphan's court in respect to the sales, and by the defendants' answers to the original and amended bill aforesaid.

And these defendants show to this honorable court, that the representations thus intended by said allegation in said recital to be imposed upon the legislature, viz., that Lippincott, Osborn, and Burrowes, had "parted" with their interest, for a valuable consideration, to said John I. Taylor, had been done in the ordinary, regular course of dealing, and that "in consequence thereof," and not otherwise, the said commissioners had executed their said deed to said John I. Taylor for his own sole use, as their vendee, was a fraud upon said legislature, sufficient per se to avoid said private act, if indeed it had any legal validity to be avoided.

And further, to show to the court the false representations of said original defendants to the members of said legislature, these defendants show that in said preamble it is further recited that said deed of said commissioners to said John I. Taylor, of said lots so struck off to the names of Lippincott, Osborn, and Burrowes, was made by said commissioners and accepted by said Taylor, under the full impression and belief on the part of said commissioners and of said John I. Taylor, as purchasers from said Osborn, Burrowes, and Lippincott, that such substitution was frequently made in New Jersey under the law for disposing of minors' estates, meaning and covertly intending thereby that this conveyance in trust for a company, which was concealed from the judges of the orphan's court, in order to hide from said court two of the company who were appointed to sell, and also the guardian of said minors, was a frequent and fair transaction in New Jersey, and that the same was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself; which said allegation and averment addressed to the members of the legislature by said petitioners and original defendants, was made to impose upon said legislature, inas-

much as no substitution such as this had ever occurred, or if it had, could not be cited as an excuse to said legislature for a manifest violation of the order of said orphan's court; and these defendants here state, that all the reports of said commissioners to said orphan's court, and the orders of court thereon, and all their deeds, were drafted by, and are now on file in the handwriting of, said Leonard Walling, one of said commissioners, and an associate in said purchase, and a principal actor in this fraud; and this fact that a party to the imputed fraud, not being a lawyer, was himself the draughtsman of the reports, and orders, and deeds, which were the instruments of the imputed fraud, casts upon him and his associates a strong badge of guilt; and these defendants do humbly insist that the numerous acts of gross falsehood, manifest in all this transaction, are also legal proofs of actual fraudulent intention on the part of said commissioners, and guardian, and their associates.

And these defendants further specify, as a misrepresentation to said legislature, the recital in said preamble, where it is admitted that some or all of the said commissioners were, at or shortly after the said sale by said commissioners, in some way interested in said property, or some part thereof, by reason of which, and of other alleged "informalities" and "irregularities" in the said sale and conveyance of said property by said commissioners, "doubts" have arisen respecting the title to said lots; and hereupon these defendants say, that thereby the members of the legislature were evidently deceived by said original defendants, who caused the said act to be draughted and presented to the said members in the words of said preamble and enacting sections, and thereby misled the said members into the gross misconception of the law, that such an "interest" of commissioners to sell, purchased by them at their own sale, was merely an "informality" or "irregularity" which could occasion only a "doubt" respecting the title to said commissioners; or else, if knowledge of the general law that such an interest avoids such deeds is to be imputed to a legislature, that legislature must be deemed and considered as intending to suspend the general law in respect to those parties in this case, against the common right and privileges of these original complainants, as citizens of other States in the Union than the State of New Jersey, claiming their common rights according to the general law extant between all citizens of said State and all other citizens of the United States in consimilar cases.

And these defendants object, and show to the court, that the further allegation in said preamble, viz., that said conveyance by said commissioners to said John I. Taylor was made in good faith, and for a fair and full consideration, which had been paid to said heirs of said Edmund Kearny, was utterly false; but upon this false representation to the members of the legislature, that body was further induced to pass said private act, whereas, in truth and in fact, the said company for whom said John I. Taylor held said premises in trust as aforesaid, had, according to their preconcerted designs, fully realized from the sales of wood cut from said premises and the rest of the said estate, by them,

and others with them, before he or they had paid the two instalments, or had an absolute and indefeasible title and perfect legal right to cut and sell the same, and while it was yet the property of said heirs, viz., after said 4th of November, 1829, and prior to April, 1831, more than sufficient in value to cover the whole amount of said pretended purchase money, viz., more than twenty thousand dollars, all the said wood cut and sold prior to the payment of the first instalment, due in April, 1830, and also the second, payable in April, 1831, being in fact the property, by legal right, of the said heirs, and they thenceforward, and to this time, were and are entitled to an account thereof, and of all the proceeds of sales of wood cut from said estate, not only as proof of said fraud, but otherwise as a fraudulent spoliation upon their property; to which proceeds they are now entitled in equity, by reason of their ignorance of the fact and want of proof of the fraud done and perpetrated thereon, until two or three years before the filing of their said bill, as is manifest from the answers of said original defendants, and otherwise.

And these defendants, further answering, show to the court that the said John I. Taylor received the proceeds of sales of said wood cut from said estate, as well from other lots as from those which were purchased by said company as the general agent of all the purchasers of said estate, and applied the same, under the direction of said company, to the general improvement of the whole estate, in laying out roads, constructing wharves, fences, &c.; and thereof the said John I. Taylor kept exact and complete accounts in certain books heretofore and recently seen and known to be in his possession; and the said John I. Taylor was required by said original and amended bill, and the order of this court thereon, to produce or render an account in the premises as required, and did not deny the charges to the effect aforesaid, and thereby, as these defendants do insist, the allegations in said bill, as to the amount of the proceeds of sales of said wood cut, stands admitted by his answer as the confession of one of the confederates in the said fraud, against all said original complainants.

And moreover, these defendants show to the court, that immediately upon the allotment of the said real estate into convenient parcels and building lots, and the laying out of roads and streets over the same with a view to the improvements, in fact made subsequently out of the proceeds of sales of wood from said estate, and with no other resources than said estate might have produced to the hands of said guardian upon a proper application to the court of chancery of said State of New Jersey, all the profit and gain which the said company did, or might with good management have realized, could, in fact, have been realized by said guardian, as said commissioners well knew, for the benefit of said minor heirs of said Edmund Kearny, deceased, according to his just expressed anticipations to this effect, well known to said guardian and said commissioners, and others of said company. And these defendants show to the court that thereafterwards very large profits were gained by said commissioners and guardian, and their associates, out of

the numerous sales and increased value of the lands so by them purchased, laid out, and improved, in the manner anticipated by said Edmund Kearny, deceased; and, by way of exemplification thereof, these defendants show to the court that it appears, from the deed of said company to said Oliver Vanderbilt, 25th February, 1839, that the purchase money for the buildings and land was $7,000, and the buildings and improvements thereon were estimated at $3,000, leaving $4,000 for fifteen acres 17-100, which is two hundred and fifty-three 64-100 dollars per acre, for which said company paid an average price of twenty-two dollars only; and two of the years between their said purchase and sale were years of general depression of real estate and monetary embarrassment.

And these defendants further specify in said preamble a false recital, averring the innocence of the occupants of the premises as purchasers, whereas it is manifest, from the answers of the original defendants in this suit, that no person could be an innocent purchaser of the premises at any time, prior to the 9th March, 1841, for none could be deemed ignorant of the fact that a commissioner's deed to a person not named as a purchaser in the report of sales, nor in any manner referred to in the order of court for making conveyances, was a void deed; nor could any one be deemed ignorant of the fact that the conveyance by the commissioners was in trust for the said commissioners and guardian, and made with the connivance of their associates to conceal their fraudulent participation in the purchase of said premises. And hereupon these defendants show that the title of said Vanderbilt, and all others through John I. Taylor, refers the purchaser at once to his title under the said commissioners' deed to said Taylor; and this refers to the order of said orphan's court, and this to the report of commissioners, purporting to be their report of purchasers of the premises, all which is matter of record; and the name of said John I. Taylor does not appear on said record as a purchaser, and his aforesaid conveyance of seven-eighths of said lots, 5 to 10, shortly after, in the same month of April, 1830, to said two commissioners and guardian, and their associates, and their deed of partition among themselves, furnish full notice of all the fraud to all persons purchasing at any time before the 9th March, 1841.

And as to all persons purchasing into said lots 5 to 10, since the 9th March, 1841, these defendants insist that the legislative act of that date must be notice sufficient to them, as the private act of February, 1844, is notice sufficient to all purchasers, after the 14th February, 1844, that divers questions of fraud remained to be settled, affecting deeply the titles to the whole tract of land sold under said order of the orphan's court; and these defendants submit, that under the circumstances of the sale of said estate, and the conduct of said commissioners and guardian, and the state of the records of the orphan's court, and court of common pleas, in respect to the laying out of the roads over the premises, and of the registry of deeds, in respect to the conveyances there recorded of the premises, and of the estate of said deceased, in Monmouth coun-

ty, in the State of New Jersey, and its legislative proceedings in the premises, and the proceedings in this circuit court of the United States, on its equity side, in this suit, none can plead ignorance of any matter which can be produced in evidence, or alleged touching the validity of any titles to any part of said real estate of the said late Edmund Kearny, now known as Key Port and Lock Port in said county.

And these defendants aver, that all the statements contained in said preamble, by way of recital and of justification of the extraordinary interference of said legislature in a case pending before this United States court were therein made, and inserted by and through the false and fraudulent representations of said petitioners.

And the said original defendants further answering, to show why the said complainants in cross bill should not have the relief prayed for in their said bill, say that by, and according to, the constitution of said State, and the law of the land, and the due course of legal proceedings therein, it has ever been established and held to be the constitutional and common law of said State, that the legislature thereof have not, nor ever have had, power by any special act of legislation, to assume the province of a jury, and settle questions of fact at issue between parties litigant in a court of competent jurisdiction, without the free consent of all said parties, nor from any assumption of facts to take real estate away from one citizen of said State and transfer it to another, for his private use, neither with nor without consideration; and whensoever this has been made a question in any court of law or equity in said State, it has always been held to the effect aforesaid; and finally it was held by his excellency Governor Vroom, sitting as chancellor, in the year 1832, in the case between Jasper S. Scudder *vs.* the Trenton and Delaware Falls company, reported in 1 Saxon's chancery reports, p. 726, where his Excellency held, in the words of the common law, adopted by the constitution of said State, that the legislature of New Jersey have no power to take away the estate of one citizen and give it to another for his private use, even upon a full consideration.

And these defendants say, that a deed which is void upon the ruling in Den *vs.* Lambert, ab initio, cannot be set up as valid by any act of the legislature of said State, without the consent of all parties interested against such deed, although a full and ample consideration had been paid; but the adverse party claiming to set up such deed as valid, must seek his relief in the due course of law and equity, according to the equitable circumstances of the case.

But nevertheless, the said original defendants, by and through their said misrepresentations to the members of said legislature, have procured the said private act to be passed as aforesaid, against the remonstrances of said original complainants as herein above stated, and their continued opposition to the same as aforesaid, whereby said deed of said commissioners to said John I. Taylor, is in terms set up and declared to be valid and effectual in law to convey the estate therein and thereby intended to be conveyed, contrary to said established law of said State; and by assuming the determination of matters of fact as in said pre-

amble is recited, the said legislature have in fact assumed to take away the legal estate of said original complainants, and to give the same to said John I. Taylor, and said two commissioners and guardians, and their assigns and associates, for their private use, and against the first subdivision of the tenth section of the first article of the Constitution of the United States, which prohibits the legislature of any State from impairing the obligation of contracts, and also against the seventh article of the amendments to said constitution, which ordains that the right of trial by jury shall be preserved; that is to say, with reference to this cause pending in this court of the United States; and also against the twenty-second article of the constitution of said State, which secures to all citizens the right of trial according to the course of the common law, and the like provisions of the present constitution of said State.

And the said legislature, by prohibiting this court of the United States, as it has in and by said private act assumed to do, from allowing said deed to be impeached herein, for the fraudulent purchase of said commissioners and others in the premises as aforesaid, at the sale thereof, which they, said commissioners and others, were commissioned to make, has thereby assumed to control the administration of justice in this court, here to be administered under the Constitution of the United States, according to the course of the common law and the general law of the land, between citizens of other States and citizens of the State of New Jersey.

And the said legislature, moreover, by their said act, does deny to the original complainants, who are citizens of other States than that of New Jersey, the privilege of equal justice, in respect to the rights of property secured to all by the first subdivision of the second section of the fourth article of the Constitution of the United States, although by necessary implication from said act of the said legislature, nevertheless, intended to allow and secure to all the citizens of said State, and all other citizens of other States, the right of impeaching similar deeds in precisely consimilar cases, according to the general law of said State, therein and thereby recognised as being extant, in full force, in respect to all other citizens of the United States, excepting only as aforesaid, these original complainants.

And these defendants further answering, to show why said complainants in cross bill should not have the relief prayed in said bill, say, that said commissioners and guardians, and their associates, did commit absolute, direct, and actual fraud in the premises, by fraudulently procuring said order of sale, and selling and attempting to convey the same as in the said original and amended bill; and the answers of the original defendants thereto appears, and is evidenced by the course of said original defendants in applying for said act of 9th March, 1841, and in applying for and procuring the said private act of 14th February, 1844, and by their admissions and statements under examination as witnesses at the several trials of the said actions of ejectment, defended by said Vanderbilt as aforesaid.

And these defendants, in reference to the premises, and with the purpose of establishing the same, do hereby pray that said original de-

fendants and complainants in cross bill may be required to produce all the records, deeds, and plans of lands in the premises, and accounts herein above mentioned and referred to, and all petitions to the legislature aforesaid, so that proof thereof may be made, in due course of equity proceedings, according to law.

And these defendants respectively say, that, as to all the statements and averments above made, so far as the same are within their own respective knowledge, the same are true; and, as to all the rest, they respectively have made them upon information of others; and that, to the best and utmost of their information, knowledge, and belief, they respectively believe said statements and averments are true.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall award; and thereupon these defendants renewedly pray for the relief prayed in their said original and amended bill, according to the case made by the pleadings and proofs, and for all their reasonable costs and charges in this suit, and especially that said complainants in said cross bill be required to pay to these original complainants in this suit all their costs of suit incurred and taxable prior to the filing of their said cross bill, or else that said cross bill be dismissed, with general costs besides, according to the due course of equity and law.

ANNE E K. CHESEBROUGH.
JAS. S. GREEN, *Sol'r for def't.*
GEORGE SULLIVAN, *of counsel.*

UNITED STATES, *Southern district of New York, ss.*

The above named Anne E. K. Chesebrough, being duly sworn, says she has perused the foregoing answer, and that she knows the contents thereof, and that what is therein stated from her own knowledge is true, and what is stated from information she believes to be true, to the utmost of her knowledge, information, and belief.

SAM'L R. BETTS, *Judge of the U. S. for the southern district of New York.*

November 3, 1847.

THOMAS JORDAN, *by his solicitor, and attorney and counsel, under special order of court,*
JAS. S. GREEN.

UNITED STATES, *district of New York, ss.*

The said James S. Green having signed this answer as above for said Thomas Jordan, being duly sworn, says, that the said Thomas Jordan had no knowledge of the contents of said answer but from information of others, as this deponent is informed by Mr. Sullivan, and believes; nor has he, the said Green, any other information in the premises but that derived from the original bill and answers, and this answer to the cross bill, which said answer to cross bill was prepared by Mr. Sullivan, of counsel and attorney in fact of the original com-

plainants, according to his knowledge, information, and belief, of the matters therein stated; and the said Green says that as to the truth thereof he cannot swear to the same, nor can he swear to his belief thereof, having no knowledge nor proof thereof, no more than is contained in the original pleadings in the case; but he believes that the said answer is drawn by Mr. Sullivan according to his knowledge and belief in the same premises, and to this extent he believes it is true.

JAS. S. GREEN,
CATHARINE K. JORDAN,
ANASTASIA K. THOMAS.

Subscribed and sworn to before me, this 22d October, 1847.

SAM'L CASSIDY,
Commissioner of the circuit court of the United States.

STATE OF OHIO,
And county of Muskingum, ss:

On this fifth day of December, in the year of our Lord one thousand eight hundred and forty-seven, personally came and appeared before me, Horatio J. Cox, a judge of the court of common pleas, for the county of Muskingum, in the State of Ohio, which is a court of record in said State, the above named Anastasia K. Thomas, sister of said Catharine, and formerly wife of George C. Thomas, junior, and having signed her name above, she was duly sworn, and says, that she has perused the foregoing answer by her signed as above, and as to all the statements and averments therein made, so far as the matters stated and averred are within her own knowledge, and that the same are true; and as to all the rest, she has made the said statements and averments upon information of her counsel, Mr. Sullivan, and others, and that to the best of her information, knowledge, and belief, said statements and averments, and all the matters therein stated, and their denials, are true.

In testimony whereof, I, Horatio J. Cox, a judge of said court of record, have hereto set my hand the day and year aforesaid.

[SEAL.]

HORATIO J. COX,
Judge of said court.

I, Anthony Wilkins, clerk of the court of common pleas above mentioned, do hereby certify, that the above is the proper signature of his honor Horatio J. Cox, judge of the said court, which is a court of record in the State of Ohio; and in testimony thereof I have hereto set my hand, and the seal of the court, the day and year aforesaid.

ANTHONY WILKINS,
Clerk of said court.

THE STATE OF OHIO,
Hamilton county, ss:

On this fourth day of December, in the year of our Lord one thou-

sand eight hundred and forty-seven, personally came and appeared before me, James Saffin, a judge of the court of common pleas, for the county of Hamilton, in the State of Ohio, which is a court of record in said State, the within named Catharine K. Jordan, wife of Captain Thomas Jordan, of the United States army, and having signed her name above, she was duly sworn, and says, that she has perused the foregoing answer by her signed as above, and as to all the statements and averments therein made, so far as the matters stated are within her own knowledge, that the same are true; and as to all the rest, that she has made the said statements and averments upon information of her counsel, Mr. Sullivan, and others, and that to the best of her information, knowledge, and belief, said statements and averments, and all the matters therein stated, and her denials, are true in substance and in matter of fact.

In testimony whereof, I, James Saffin, a judge of said court of record, have hereto set my hand the day and year aforesaid.

JAMES SAFFIN,
Judge of said court of common pleas, Hamilton county, Ohio.

I, Edward C. Roll, clerk of the court of common pleas above mentioned, do hereby certify, that the above is the proper signature of his honor James Saffin, judge of said court, which is a court of record in the State of Ohio.

And in testimony thereof I have hereunto set my hand, and the seal of the court, the day and year aforesaid.

[SEAL.]

E. C. ROLL, *Clerk of said court,*
J. W. McMASTER, *Deputy.*

THE STATE OF OHIO,
Franklin county, ss:

Thomas Kearney, one of the defendants to the bill within named, this day personally appeared before the subscriber, president judge of the court of common pleas, within and for said county and State, and being duly sworn, says, that the within answer by him signed is made according to his best knowledge, information, and belief, and as to so much thereof as is stated from his own knowledge it is true, and as to the rest thereof, which is stated from information or belief, he believes the same is true.

Sworn to and subscribed before me, this 7th day of March, A. D. 1848.

JAMES L. TORBERT,
Prest. Judge 12th jud. circuit of Ohio.

THE STATE OF OHIO,
Franklin county, ss:

I, Lewis Heyl, clerk of the court of common pleas, within and for said county of Franklin, in the State of Ohio, certify, that the above named hon. James L. Torbert was before, at, and after the date of the

above affidavit, and still is, the president judge of said court of common pleas, within and for said county, (being in the 12th judicial circuit of Ohio,) duly commissioned and qualified as such; that his signature above is genuine, and that full faith and credit are given to all his official acts as such judge, both in and out of judication.

Witness my hand and the seal of said court, at Columbus, this 7th day of March, A. D. 1848.

[L. S.] Attest: LEWIS HEYL, *Clerk.*

At a court of common pleas, holden at the court house in Freehold, in and for the county of Monmouth, of January term, A. D. one thousand eight hundred and thirty:

Present, John Patterson, William J. Bowne, John Headden, and others, esquires, judges.

Petition of Samuel Carhart and others, for a public road in Middletown.

To the inferior court of common pleas of the county of Monmouth:

The subscribers, freeholders, resident in the said county, thinking that a public road of three rods wide, in the township of Middletown, in the said county, to begin at a stake near the Fishing Point on the easterly side of Brown's Point cove, and to run there as straight as the nature of the ground and other circumstances will admit of, to the road leading from the village of Middletown to Middletown Point, at or near the road leading from the last mentioned road, through the lands of Elisha Holmes, to Middletown academy, and to end there. And that a road of two-and a-half rods wide, in said township of Middletown, to begin at or near the intersection of the said road leading from the village of Middletown to Middletown Point, with the road leading from the lands of Oliver Sproul to the bay shore at Peter I. Snyder's, (near the house of Asher Holmes, where he now lives,) and to run thence as straight as the nature of ground and other circumstances will admit of, to the road aforesaid intended to be applied for, somewhere to the westward or northwestward of Hendrick Vandines, and to end there. And also that a road of three rods wide, in said township of Middletown, to begin in the highway leading from Brown's Point to Middletown Point, near the corner between the Brown's Point tavern lot and Benjamin B. Cooper's land, to run thence as straight as the nature of the ground and other circumstances will admit of, across Lupataking creek to the road first above mentioned as intended to be applied for, and to end there, are necessary, and would be conducive to public interest and convenience, do hereby respectfully apply to, and request of, the said court to appoint surveyors of the highways of the said county to meet at such time and place as the court shall direct, for the purpose of laying out said roads.

Samuel Carhart,
Wm. Murphy,
Joseph Carhart,
Septimus Stevens,
John A. Vanderbilt,
Joseph R. Walling,

Stephen Bedle,	Ezra Osborn,
S. C. Vanderhoef,	John I. Taylor,
Daniel Weston, jr.,	William Hoff,
Daniel Holmes,	Joseph Walling,
Asher Holmes,	Joseph Walling,
Hendrick Vandine,	Cornelius Walling,
Joel Carhart,	James Sproul,
James Hopping,	William Smith,
Primrose Hopping,	Edward Walling.

MONMOUTH COUNTY, *ss.*

Before me, James Hopping, one of the justices of the peace in and for said county, personally appeared Leonard Walling, who being sworn saith, that he did put up three notices of the foregoing application, and agreeing with the same as respects the description of the within proposed roads, at three of the most public places in the township of Middletown, in said county, viz., one at the tavern at Brown's Point, on the 11th instant; one at Leonard Walling's store, on the same day; and one at the house of William Wilson, innkeeper, on the 13th instant, each of which said notices were signed by more than ten persons, whom he verily believes to be freeholders and residents in said county.

LEONARD WALLING.

Sworn and subscribed before me, the 26th day of January, 1830.

JAMES HOPPING, *Justice.*

(The order of court endorsed on said petition is as follows:)

January term.

The petition of Samuel Carhart and others, for a road. The prayers of the within petitioners is granted. The surveyors of Middletown, Freehold and Shrewsbury, are ordered to meet at the house of Septimus Stevens, at Brown's Point, in Middletown, on Tuesday, the 23d day of February next, at 10 o'clock, a. m., to do that they may think they ought to do according to law.

JEHU PATTERSON.

STATE OF NEW JERSEY,
Monmouth county, ss.

I, Samuel Mairs, clerk of the court of common pleas in and for the county of Monmouth, do hereby certify, that the foregoing is a true copy of the proceedings in the case of the application and order for the above named road, as they remain on file in my office.

In testimony whereof I have hereunto set my hand and affixed [L. S.] the seal of said court, at Freehold, this 24th day of February, A. D. 1844.

S. MAIRS, *Clerk.*

CIRCUIT COURT UNITED STATES, NEW JERSEY.

First Monday, May, A. D. 1848.

Between HORATIO N. KEARNEY et al., compl'ts,
and
JOHN I. TAYLOR et al., defendants.

On bill, answer, and cross bill.

It is ordered, on motion of George Sullivan, esquire, of counsel with the original claimants, and with the defendants to cross bill, that the said original complainants, excepting only Horatio W. Kearney, have leave to file their cross bill against the said Horatio W. Kearney as confederating against them to defraud them in the premises with some or all of the original defendants, now complainants in cross bill. And that the said cross bill on the filing thereof be served by copy with subpœna in due form upon said Horatio N. Kearney in person, wherever he may be found, and he be required by said subpœna to appear and bring in his answer thereto within forty days after service as aforesaid, or show cause in due form on the first Monday in July next, before his honor, Judge Dickinson, at Paterson, why he does not, or his default be ordered against him at that time, and the cause proceed to issue in due course of equity proceedings.

Circuit court of the United States, third circuit, for the district of New Jersey.

In equity. Between

THOMAS KEARNY, Horatio N. Kearny, Catharine K. Jordan and Thomas Jordan, her husband, in her right, Anne E. K. Chesebrough, and Anastasia K. Thomas, and others, defendants in cross bill,
and
JOHN I. TAYLOR, Isaac K. Lippincott, Ezra Osborn, Oliver Vanderbilt, John Hopping, Theresa Walling, and others, complainants in cross bill.

The answer of Horatio N. Kearny, of the State of Ohio, named in the original bill as a complainant, and now made defendant in said cross bill, being the son and heir at law of Edmund Kearny, deceased, late of said State of New Jersey, with his brother and sisters, named also as complainants in said original bill, unto the cross bill, or so much thereof as he is advised to answer, filed in this cause by John I. Taylor, Isaac K. Lippincott, Ezra Osborn, Oliver Vanderbilt, John Hopping, Theresa Walling, and others, in said cross bill mentioned, as by reference to the same on file will appear. This defendant, now and at all times, saving and reserving unto himself all and all manner of benefit and advantage of exceptions which can or may be had or taken to

the many errors, untruths, deficiencies, and other imperfections in the said cross bill contained, for a full and perfect answer thereunto, or to such parts thereof as he is advised it is material or at all necessary for him to answer:

Answering first to the first interrogatory, numbered one, says, that this defendant and the other defendants who were original complainants in the original bill, did file their said original bill and amendments in this court. And the defendants to said original bill did file their answers to said original bill and amendments to some extent, and in some respects, as in said cross bill is set forth, but in respect to many material facts stated in said original bill and amendments, the said complainants in their said cross bill have, by their omissions and misstatements therein, suppressed and misstated numerous facts and circumstances contained in said original bill and answers, as by reference to the same bill will appear; and, therefore, this defendant prays leave to refer, and doth refer, to said original bill and amendments, and all the answers thereto, for greater certainty in respect to the same, as of right this defendant may, according to law and equity.

And this defendant in said cross bill further answering, answers to the interrogatory numbered two, and says, that the legislative council and general assembly of the State of New Jersey, did not pass in due form of legislative proceedings the private act, of which a copy is set forth in said cross bill, at the time in said cross bill stated, but this defendant admits that an act of the same import purporting to be such a private act was passed at such time, but for a true copy of such act this defendant now and at all times refers to the records thereof for greater certainty, or to a full exemplified copy of such record duly authenticated, which the said complainants in said cross bill are, if they rely on such private act, bound and required by due course of law to produce here before the court at the hearing of this cause.

And this defendant further answering, answers to the interrogatory numbered three, and says, he doth admit that the Edmund Kearny, the real estate, and the proceedings in said orphan's court, and the commissioners and the sale, and the purchasers, and the deed of the commissioners, to John I. Taylor, named in said private act, are the same named and referred to in said original bill, and amendments, and answers, but for greater certainty as to the premises, this defendant, now and at all times, refers to the record thereof as set forth in the original bill, and to all the statements respecting the same contained and set forth in said original bill and amendment, and answers thereto.

And this defendant further answering says, that the said complainants in said cross bill are not entitled to the relief thereby prayed, because at the time, and long before the said private act was passed on the 14th February, 1844, the act of the legislature of the State of New Jersey, passed on the 9th March, 1841, containing provisions for quieting and settling the conflicting interests and claims of all the parties to the said original suit herein, and of all other parties in interest, as well as the said heirs of the said Edmund Kearny, deceased, and all persons hold-

ing or claiming under them, as also the said purchasers at said commissioners' sale, and all persons holding or claiming under them, was then and still is in full force and effect, and binding and obligatory upon all the said parties; which said act of 9th March, 1841, was passed at the instance and procurement, and by and in behalf of those who claimed title to the lands in said cross bill mentioned, under the said commissioners' deed to the said John I. Taylor, or some or all of them, and as this defendant has been informed and verily believes, was advocated and passed by the aid and influence of the counsel of the said complainants in said cross bill, or some or all of them.

And this defendant further answering says, that at the time, and for many years before he had resided in the State of Ohio, and cannot, therefore, state of his own knowledge, but he has been credibly informed, and believes, and therefore charges, that the provisions and terms of said act of 9th March, 1841, as set forth in said original bill in this suit, were inserted, and the said act passed with the entire approbation and consent of the said heirs of the said Edmund Kearny, deceased, and of the said purchasers at said commissioners' sale, and those holding under them.

And this defendant further answering respectfully insists, that the preamble and the first section of the said act of 9th March, 1841, being passed as aforesaid, by and with the approbation and consent of all the said parties in interest, for quieting and settling the conflicting claims of the said parties in and to the land and premises in question in this suit, thereby became and still is a subsisting and binding contract between said parties for quieting and settling said conflicting claims.

And this defendant further answering says, that the said complainants in said cross bill ought not to have the relief thereby prayed, because the said complainants in the proceedings heretofore had, as well at law as in equity, in this honorable court, have always set up and relied on the said preamble and first section of the said act of 9th of March, 1841, to perfect them in their title to the land and premises in question in this cause.

And this defendant in cross bill further answering in the premises says, that the act of March 9th, 1841, and the preamble and the first section thereof, are now in full force and effect, and have not been repealed by said private act passed on the 14th February, 1844, neither by express enactment nor by legal implication; and the said private act so passed the 14th February, 1844, so far as the same is in any respect inconsistent with the said act of 9th March, 1841, that is, with the preamble and first section thereof, was always and is now utterly void and of no legal effect between these parties, because the same is repugnant to the Constitution of the United States, that is, the tenth section of the first article thereof, which ordains "that no State shall pass any law impairing the obligation of contracts."

And further answering, this defendant to said cross bill, who was a complainant in the original and amended bill, says, that said private act, passed the 14th February, 1844, was obtained by and through

the unfair management and false and fraudulent representation and concealments of the said original defendants, some or all of them, in the furtherance of their unlawful and fraudulent combination and conspiracy to defraud the original complainants of their inheritance, as in their said original and amended bill is set forth and charged.

And this defendant thereupon further says, he has understood, and believes, and therefore states, that a petition was presented by complainants in said cross bill to said legislature, in January, 1844, praying that such an act might be passed, while this suit then pending in this court was and had been for a long time under notice for hearing upon bill and answers, that is, upon the original defendants' own statements of the case in defence against the charges of fraud in said bill and amendments charged, but no copy of said petition was ever served upon, or shown by the said petitioners to, said complainants or their attorneys, solicitors, or counsel, but so privately and covertly was the application of said petitioners conducted, that no notice thereof came to the knowledge of said original complainants, until a bill in the very words and figures of said act had finally passed to a third reading in the general assembly, and was laying on its table awaiting there its third reading; and in this stage of its progress, and before it had been taken up on its third reading, a remonstrance in behalf of said original complainants was presented in said general assembly against the passage of said act, until the remonstrants should have had an opportunity for a hearing before the legislature, or a committee thereof, against the passage of said act; which said remonstran*ts* so presented before the legislature, first in the assembly immediately on its coming to order, and before said act or bill of 14th of February, 1844, had been taken up on that day, and said remonstrance was also read in the legislative council on the same 14th day of February, 1844, immediately upon said council coming to order on that day, and printed copies thereof were previously distributed and laid before the members of said legislature in their places respectively. But the said assembly then and there forthwith laid the said remonstrance on its table without any further action thereon, and shortly after, viz., on the 14th day of February, 1844, took up said bill, and the said act was passed.

Whereupon the original complainants, as soon thereafter as might be, presented their further remonstrance, averring that said act had been fraudulently obtained, and praying that the same might be repealed for that and other causes therein set forth, and thereupon the said legislature appointed a joint committee, before whom, as attorney in fact of said original complainants, Mr. G. Sullivan appeared, and remonstrated in their behalf against said act so passed as aforesaid, as being against the common and constitutional right of said complainants, and in violation of their rights as citizens of other States, inasmuch as thereby a special law was provided by said act for the trial of their legal rights while the general law of the State in respect to all citizens of said State, and of all other citizens of the United States, remained the same for the protection and assurance of their rights in precisely consimilar

cases, and other matters in said remonstrance set forth, were insisted upon. But said committee nevertheless reported against the prayer of said remonstrance and petition of said original complainants, and so the repeal of the act was refused, and the same was enacted against their will and their unvarying opposition to the same; and this defendant doth aver that they, the said original complainants, never did assent to the passing of said act of 14th of February, 1844, but have constantly opposed the same, and now, and at all times, do protest against it, as being against their common right and against the common law established in said State by the 22d article of the constitution of said State then, in 1844, in force, and against the constitution of said State since adopted and now in force therein, and against the Constitution of the United States as herein shown and set forth.

And this defendant further answering says, that as he has been informed and verily believes said original defendants, some or all of them, and their agents, made to the members of the said legislature in their petition for the act of 14th of February, 1844, and otherwise, divers false and fraudulent representations in respect to the records of the orphan's court and the proceedings of said commissioners, in order to mislead and deceive said members of said legislature, and thereby did deceive them; and this defendant prays that said original defendants, and now complainants in cross bill, may be required to produce the original petition on which said private act was granted.

And this defendant doth aver, that the recital in the first clause of said preamble, wherein it is alleged that said commissioners sold said real estate in parcels to the following persons, viz., lot No. 5, and lot No. 6, and lot No. 10, to Ezra Osborn; and lot No. 7 and lot No. 9 to Isaac K. Lippincott; and lot No. 8 to Richard C. Burrowes, was and is false; and that the recital therein that the said Osborn, Lippincott, and Burrowes, were duly reported by the said commissioners to the said orphan's court, in the term of January, 1830, as the purchasers of said property, is also false, and these misrepresentattons were fraudulently made to the members of said legislature by said petitioners and original defendants in this suit, and their agents; and, moreover, these defendants do aver, that it appears by the answers of said original defendants in this suit, and by the said commissioners' said deed to said John I. Taylor, and otherwise, as herein shown, that said Osborn, Lippincott, and Burrowes were not in fact the purchasers of said lots, but that the real and true purchasers were the said James Hopping and Leonard Walling, two of said commissioners, and Joseph Taylor, guardian of certain of the minor children of said Edmund Kearny, deceased, and John Hopping, Ezra Osborn, and David S. Bray, for whose use and benefit the said three commissioners made and executed their said deed to said John I. Taylor, bearing date the 1st day of April, 1830, as their trustee, and so the fact stands admitted by said Lippincott in his answer to said original and amended bill; and the said John I. Taylor afterwards, on the 28th of April, 1830, made and executed his deed bearing that date, to said cestuis

que trusts thereby conveying to them, as tenants in common, seven-eighths of all of said lots, excepting and reserving for special distribution among them certain twenty-four building lots, described and laid out upon a plan made and agreed to between said cestuis que trusts and said John I. Taylor, before the execution of said commissioners' said deed to said John I. Taylor as such trustee, bearing date 1st of April, 1830; all of which appears by reference to said deeds and the plan of the twenty-four lots, and the other plans of said estate, and the answers of said Lippincott and others referred to, and all which is now referred to as part of this answer to said cross bill; and from these and other facts and circumstances shown by the answers of the original defendants in this suit, this defendant says, that the said lots 5, 6, 7, 8, 9, and 10, were not sold to said Osborn, Burrowes, and Lippincott, but to the said two commissioners and their associates, and the interest in the said lots of the said two commissioners, and of the said guardians, was fraudulently concealed from said orphan's court; and so this defendant avers, that said Osborn, Burrowes, and Lippincott, were not duly, but were falsely and fraudulently, reported as purchasers of said lots, and so the said recital in this respect was utterly false, and was fraudulently suggested and made to the members of said legislature by said petitioners and original defendants in this suit, some, or all of them, in order to mislead and deceive the members of said legislature; and the fact that others, as aforesaid, were the real and true purchasers, was fraudulently concealed from the knowledge of said orphan's court, in order that the said commissioners and their associates, well knowing that said commissioner and said guardian could not legally be purchasers of said estate, might nevertheless have and enjoy the profit and gain thereof, to the loss and injury of said minors and others, original complainants in this suit; and this concealment from said court, which was in fact and in law, and absolute and direct and actual fraud on the part of said two commissioners, was also concealed from said legislature by said petitioners and said original defendants, and thereby said legislature were deceived, and induced to pass said act of 14th of February, 1844, without allowing this defendant and his co-heirs opportunity to appear and oppose the same while on its passage.

And further, to show the falsehood and fraud of said commissioners in the premises, this defendant refers to their said deed to said John I. Taylor, wherein the said commissioners state, by way of recital, in direct opposition to their sworn report of sales and purchases, that said John I. Taylor was the true and actual purchaser, and that said Lippincott, Burrowes, and Osborn acted as his agents in bidding for said lots; and yet the said Lippincott, in his answer, swears that said John John I. Taylor was not the purchaser, but accepted said commissioners' said deed only as a trustee for said two commissioners and their associates, and all this fraudulent conduct of said commissioners upon the said orphan's court, and said heirs, was concealed from said court, and was also concealed from said legislature, by said petitioners and others, original defendants in this suit, and the arrangement between

said two commissioners and their associates, that said conveyance by said commissioners should be made to said John I. Taylor in trust as aforesaid, was, in fact, made before said sales were confirmed by said orphan's court, or even the commissioners' report of purchasers was made out and sworn to, as will appear, among other evidence, from the proceedings on the part of the said two commissioners and their associates at the same court of common pleas, in January term, 1830, sitting as a court to authorize the laying out of roads over the said estate, upon application of the said commissioners and their associates.

And this defendant says, that the said orphan's court, acting thus under fraudulent concealments and misrepresentations of fact as to the identity of the true and real purchasers, could not, and cannot, be deemed as having duly confirmed said sales, as in said preamble of said private act is averred and recited, inasmuch as they had no power to order deeds to be executed to said Lippincott, Osborn, and Burrowes, if, as the said commissioners say, by way of recital in their deed to said John I. Taylor, he was the purchaser; nor if it were true (as said Lippincott swears in his answer) that said Taylor was not, but that said two commissioners and others, their associates, were in fact the purchasers.

And again this defendant specifies, as a further instance of false and fraudulent representation on the part of said original defendants to said legislature, viz., that the said Lippincott, Osborn, and Burrowes had "parted" with their interest in the property thus said to be purchased by them, and for a valuable consideration; and in said said recital it is averred, that, "in consequence thereof," the deeds ordered by the orphan's court to be executed to them, said Lippincott, Osborn, and Burrowes, were not executed to these persons, but to John I. Taylor, as their vendee; whereas, in truth and fact, as it appears by said defendant's answers respectively in this suit, and otherwise, said lots, No. 5 to 10, were bought by said Burrowes, Osborn, and Lippincott, for a company of eight persons, to consist of said two commissioners, Leonard Walling, James Hopping, and said guardian, Joseph Taylor, Ezra Osborn, Isaac K. Lippincott, John Hopping, David S. Bray, and John I. Taylor, and their associates, for whose use said commissioners' said deed to said John I. Taylor was made and executed; that is, for himself, and the rest of said company above named, to whom said John I. Taylor thereafter made a conveyance of seven-eighths of said lots, to be held in common with himself as owner of one-eighth, but reserving certain twenty-four building lots to be distributed among the company; said deed of said commissioners being executed in April, 1830, and said conveyance of the said John I. Taylor, and the map of said twenty-four lots referred to in said conveyance, were all made in said April, all being, in legal effect, one act of said parties, and now referred to as part of this answer.

And this defendant shows to this honorable court, that the representations thus intended by said allegation in said recital to be imposed upon the legistature, viz., that Lippincott, Osborn, and Burrowes had

"parted" with their interest, for a valuable consideration, to said John I. Taylor, had been done in the ordinary regular course of dealing, and that, "in consequence thereof," and not otherwise, the said commissioners had executed their said deed to said John I. Taylor, for his own sole use, as their vendee, was a fraud upon said legislature, sufficient of itself to avoid and invalidate said private act, if, indeed, it ever had any legal validity.

And further, to show to the court the false representations of said original defendants to the members of said legislature, this defendant shows that in said preamble it is further recited that said deed of said commissioners to said John I. Taylor, of said lots so struck off to the names of Lippincott, Osborn, and Burrowes, was made by said commissioners, and accepted by said Taylor, under the full impression and belief, on the part of said commissioners, and of said John I. Taylor, as purchaser from said Osborn, Burrowes, and Lippincott, that such substitution was frequently made in New Jersey, under the law for disposing of minors' estates, meaning, and covertly intending thereby, that this conveyance in trust for a company, (which was concealed from the judges of the orphan's court, in order to hide from said court two of the company who were appointed to sell, and also the guardian of said minors,) was a frequent and fair transaction in New Jersey, and that the same was a virtual and proper compliance with the order of said orphan's court, and legal and valid in itself; which said allegation and averment, addressed to the members of the legislature by said petitioners and original defendants, were made to impose upon said legislature, inasmuch as no substitution, such as this, had ever occurred, or if it had, could not be cited as an excuse to the said legislature for a manifest violation of the order of said orphan's court; and this defendant here states that all the reports of said commissioners to said orphan's court, and the orders of court thereon, and all their deeds, as this defendant has been informed, and verily believes, were drafted by, and are now on file in the handwriting of, said Leonard Walling, one of said commissioners, and an associate in said purchase, and a principal actor in this fraud; and this fact, that a party to the imputed fraud, not being a lawyer, was himself the draughtsman of the reports, and orders, and deeds which were the instruments of the imputed fraud, casts upon him and his associates a strong badge of guilt. And these defendants *does* humbly insist that the numerous acts of gross falsehood manifest in all this transaction, are also legal proofs of actual fraudulent intention on the part of said commissioners and guardian, and their associates, in the sales of said lots No. 5 to 10.

And this defendant further specifies, as a misrepresentation to said legislature, the recital in said preamble, where it is admitted that some or all of said commissioners were at, or shortly after, the sale by said commissioners, in some way interested in said property, or some part thereof, by reason of which, and of other alleged "informalities" and "irregularities" in the said sale and conveyance of said property by said commissioners, "doubts" have arisen respecting the title to said

lots; and hereupon this defendant says that thereby the members of the legislature were evidently deceived by said original defendants, who caused the said act to be draughted and presented to the said members in the words of the said preamble and enacting sections, and thereby misled the said members into a gross misconception of the law that such an interest of commissioners, purchased by them at their own sale, was merely an "informality" or "irregularity" which could occasion only a "doubt" respecting the title to said commissioners; or else, if knowledge of the general law that such an interest avoids such deeds is to be imputed to a legislature, that legislature must be deemed and considered as intending to suspend the general law in respect to these parties in this case, against the common rights and privileges of these original complainants as citizens of other States in the Union than that of New Jersey, claiming their common rights according to the general law extant between all citizens of said State, and all other citizens of the United States, in consimilar cases.

And, moreover, this defendant shows to the court, that immediately upon the allotment of the said real estate into convenient parcels, and building lots, and the laying out of the roads and streets over the same, with a view to the improvements in fact made subsequently out of the proceeds of sales of wood cut from said estate, and with no other resources than said estate might have produced to the hands of said guardian, upon a proper application to the court of chancery of said State of New Jersey, all the profit and gain which the said company did or might, with good management, have realized, might in fact have been realized by said guardian, as said commissioners well knew, for the benefit of said minor heirs of said Edmund Kearney, deceased, according to his just expressed anticipations to this effect, well known to said guardian, and said commissioners, and others, of said company.

And this defendant shows to the court, that thereafterwards very large profits were gained by said commissioners and guardian, and their associates, out of the numerous sales and increased value of the lands so by them purchased, laid out, and improved, in the manner anticipated by said Edmund Kearny, deceased; and by way of exemplification thereof, this defendant shows to *to* the court, that it appears from the deed of said company to said Oliver Vanderbilt, 25th February, 1839, that the purchase money for the buildings and land was $7,000, and the buildings and improvements thereon were estimated at $3,000, leaving $4,000 for fifteen acres $\frac{77}{100}$, which is two hundred and fifty-three $\frac{64}{100}$ dollars per acre, for which said company paid an average price of twenty-two dollars only, and two of the years between their said purchase and sale were years of general depression of real estate and monetary embarrassment.

And this defendant further answering says, that previous to the said application to the orphan's court for the appointment of commissioners as aforesaid, he, this defendant, applied to the said Joseph Taylor, the said guardian, to have the wood on the said land sold for the benefit of the said minors, and the said guardian thereupon informed him, this

defendant, that the said wood could not be sold, and that the only lawful course to pursue was to have commissioners appointed as aforesaid. This defendant at the time being very young, only about twenty-three years old, and altogether ignorant in such matters, and never having given any attention to business of this nature, was imposed on by the fraudulent representations of the said guardian, and believed that his statements were true; and it was not till long after that he ascertained that the said wood might have been sold to the great advantage of the said heirs of Edmund Kearny, deceased, and their valuable inheritance saved from the sacrifice of the fraudulent sale by the said commissioners.

And this defendant further shows to this honorable court, that he had understood, and believes it to be true, and therefore avers, that the said commissioners, in further carrying out their fraudulent purposes, were not satisfied with the low price of said land sold by them by the acre, but only reported —— acres to have been sold, when in fact —— acres were sold, and comprised within the metes and bounds contained on their deeds, thus defrauding the said heirs of about —— acres of land, and the fair value thereof.

And this defendant further specifies in said preamble a false recital, averring the innocence of the occupants of the premises as purchasers, whereas it is manifest, from the answers of the original defendants in this suit, that no person could be an innocent purchaser of the premises at any time prior to the 9th of March, 1841, for none could be deemed ignorant of the fact, that a commissioner's deed to a person not named as a purchaser in the report of sales, nor in any manner referred to in the order of court for making conveyances, was a void deed; nor could any one be deemed ignorant of the fact, that the conveyance by the said commissioners was in trust for the said commissioners and guardian, and made with the connivance of their associates to conceal their fraudulent participation in the purchase of said premises. And hereupon this defendant shows that the title of said Vanderbilt, and all others through John I. Taylor, refers the purchaser at once to his title under the commissioners' deed to said Taylor; and this refers to the order of said orphan's court, and this to the report of the commissioners, purporting to be their report of purchasers of the premises, all which is matter of record; and the name of said John I. Taylor does not appear on said record as a purchaser, and his aforesaid conveyance of seven-eighths of said lots, 5 to 10, shortly after, in the same month of April, 1830, to said two commissioners and guardian, and their associates, and their deed of partition among themselves, furnish full notice of all the fraud to all persons purchasing at any time before the 9th of March, 1841. And as to all persons purchasing said lots, 5 to 10, since 9th March, 1841, this defendant insists that the legislative act of that date must be notice sufficient to them, as the private act of February, 1844, is notice sufficient to all purchasers, after the 14th February, 1844, that divers questions of fraud remained to be settled, affecting deeply the titles to the whole tract of land sold under said order

of the orphan's court; and this defendant submits, that under the circumstances of the sale of said estate, and the conduct of said commissioners and guardian, and the state of the records of the orphan's court and court of common pleas, in respect to the laying out of the roads over the premises, and of the registry of deeds in respect to the conveyances there recorded of the premises, and of the estate of said deceased in Monmouth county, in the State of New Jersey, and its legislative proceedings in the premises, and the proceedings in this circuit court of the United States, on its equity side in this suit, none can plead ignorance of any matter which can be produced in evidence, or alleged, touching the validity of any titles to any part of said real estate of the said late Edmund Kearny, deceased, now known as Keyport and Lockport, in said county.

And this defendant avers, that all the statements contained in said preamble, by way of recital and of justification of the extraordinary interference of said legislature, in a case pending before this United States court, were therein made and inserted by, and through, the false and fraudulent representations of said petitioners.

But, nevertheless, the said original defendants, by and through their said misrepresentations to the members of said legislature, have procured the said private act to be passed as aforesaid, against the remonstrances of said original complainants, as herein above stated, and their continued opposition to the same as aforesaid, whereby said deed of said commissioners to said John I. Taylor is in terms set up and declared to be valid and effectual in law to convey the estate therein and thereby intended to be conveyed, contrary to said established law of said State; and by assuming the determination of matters of fact, as in said preamble is recited, the said legislature have in fact assumed to take away the legal estate of said original complainants, and to give the same to said John I. Taylor, and said two commissioners and guardian, and their assigns and associates, for their private use, and against the first subdivision of tenth section of the first article of the Constitution of the United States, which prohibits the legislature of any State from "impairing the obligation of contracts;" and also against the seventh article of the amendments to said Constitution, which ordains that "the right of trial by jury shall be preserved," that is to say, with reference to this cause pending in this court of the United States; and also against the twenty-second article of the constitution of said State, which secures to all citizens the right of trial according to the course of the common law, and the like provisions of the present constitution of said State.

And the said legislature, by prohibiting this court of the United States, as it has in and by said private act of February, 1844, assumed to do, from allowing said deed to be impeached herein for the fraudulent purchase of said commissioners, and others in the premises as aforesaid, at the sale thereof, which the said commissioners and others were commissioned to make, has thereby assumed to control the administration of justice in this court, here to be administered under the Consti-

tution of the United States, according to the course of the common law and the general law of the land, between citizens of other States and citizens of the State of New Jersey.

And the said legislature, moreover, by their said act, does deny to the original complainants, who are citizens of other States than that of New Jersey, the privilege of equal justice in respect to the rights of property secured to all by the first subdivision of the second section of the fourth article of the Constitution of the United States, although, by necessary implication from said act, the said legislature nevertheless intended to allow and secure to all the citizens of said State, and all other citizens of other States, the right of impeaching similar deeds in precisely consimilar cases, according to the general law of said States therein and thereby recognised as being extant in full force, in respect to all other citizens of the United States, excepting only as aforesaid these original complainants.

And this defendant further answering, to show why said complainants in cross bill should not have the relief prayed for in said bill, says, that said commissioners and guardian, and their associates, did commit absolute, and direct, and actual fraud in the premises, by fraudulently procuring said order of sale, and selling and attempting to convey the same, as in the said original and amended bill, and the answers of the original defendants thereto, appears, and is evidenced by the course of said original defendants in applying for said act of 9th March, 1841, and in applying for and procuring the said private act of 14th February, 1844, and by their admissions and statements under examination as witnesses at the several trials of the said actions of ejectment, defended by said Vanderbilt as aforesaid.

And this defendant, in reference to the premises, and with the purpose of establishing the same, doth hereby pray, that the said original defendants and complainants in cross bill may be required to produce all the records, deeds, and plans of lands, in the premises and accounts herein above mentioned and referred to, and all petitions to the legislature aforesaid, so that proof thereof may be made in due course of equity proceedings, according to law.

And this defendant respectfully says, that, as to all the statements and averments above made, so far as the same are within his own knowledge, the same are true, and as to all the rest he has made them upon information of others, and that, to the best and utmost of his information, knowledge, and belief, he believes said statements and averments are true.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and thereupon this defendant renewedly prays for the relief prayed in the said original and amended bill, according to the case made by the pleadings and proofs, and for all his reasonable costs and charges in this suit; and especially that said complainants in said cross bill be required to pay the original complainants in this suit all the costs of suit incurred, and taxable prior to the filing of their said cross bill, or else that said cross bill be dis-

missed, with the general costs besides, according to the due course of equity and law.

Signed, JOHN I. CHETWOOD,
Solicitor, of counsel with Horatio N. Kearny, the above named defendant.

DISTRICT OF NEW JERSEY.

Horatio N. Kearney, the defendant in the foregoing answer named, being duly sworn according to law, deposes and says, that the matters in the said answer contained, so far as they relate to his own acts and deeds, are true of his own knowledge; and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true.

Signed, H. N. KEARNY.

Subscribed and sworn at Newark, N. J., this second day of December, 1848.

Signed, W. M. SCUDDER,
Commissioner of bail and affidavits, &c., for circuit court, U. S., third circuit, New Jersey district.

Circuit court of the United States, New Jersey. In equity.

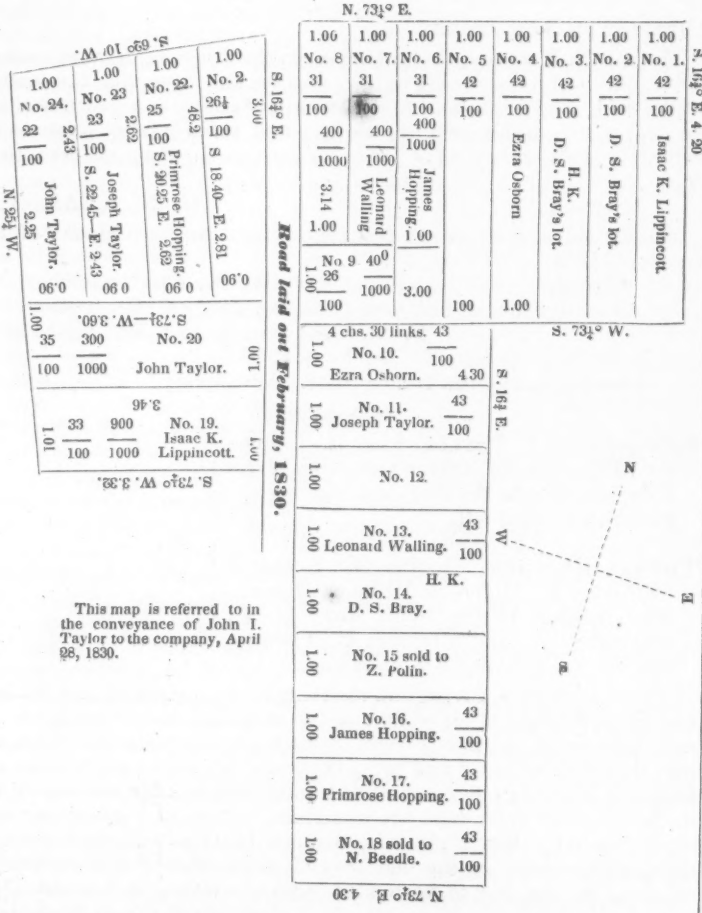
Replication.

Between JOHN I. TAYLOR, Isaac K. Lippincott, Ezra Osborn, Oliver Vanderbilt, John Hopping, Teresa Walling, and others, complainants in cross bill,
and
THOMAS KEARNEY, Horatio N. Kearney, Catharine K. Jordan, and Thomas Jordan, her husband, in her right, Anne E. K. Cheesebrough, and Anastasia R. Thomas, and others, defendants in cross bill.

These replicants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers of the said several defendants, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said several defendants are uncertain, untrue, and insufficient to be replied unto by these replicants; without that, that any other matter or thing whatsoever, in the said several answers contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is untrue; all which matters and things these replicants are, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

P. VREDENBURGH,
Solicitor, and counsel with complainants in cross bill.

Map of twenty-four lots of land near the fishing point on the easterly side of Brown's Point Cove, surveyed April 9, 1830, and laid down on a scale of two chains to an inch, by Leonard Walling. The place was given the name of Key Port in the spring of '31.



This map is referred to in the conveyance of John I. Taylor to the company, April 28, 1830.

The above is an exact copy of an original map in the handwriting and drawing of Leonard Walling, produced as such at the trial of an action of ejectment, Den ex dem. of Thomas Kearny and others, against Oliver Vanderbilt, defendant, in the circuit court of the United States, for the district of New Jersey, made this tenth day of October, A. D. eighteen hundred and forty-two, and carefully compared by

GEORGE SULLIVAN.

1716.

Petition.

To the judges of the orphan's court, in and for the county of Monmouth, April term, 1829.

The petition of Daniel Holmes humbly showeth, that your petitioner and John W. Holmes had purchased of James P. Kearny, deceased, previous to his death, the equal undivided one seventh part of all the land of Edmund Kearny, late of the county of Monmouth, deceased; that the said James P. Kearny and Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Anne Kearny, and Mary Eliza Kearny are the only children and heirs of the said Edmund Kearny, late of the county of Monmouth, deceased, who died without a will, and intestate, seized of a considerable real estate in fee simple, in the township of Middletown, in the county of Monmouth, and State of New Jersey, by reason whereof the said real estate descended to the said James P. Kearny, who conveyed to your petitioner and John W. Holmes aforesaid, and James P. Kearny, Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Anne Kearny, and Mary Eliza Kearny, who now hold the same undivided, as tenants in common, and by reason of the minority of some of the children, no division can take place by agreement. Whereof your petitioner prays that the orphan's court for the county of Monmouth would be pleased to order and decree a division of all the real estate of the said Edmund Kearny, deceased, whereof he died seized, in the county of Monmouth, between the heirs of the said deceased and others interested, by metes and bounds, to be held in severalty, in manner prescribed by law, and that the court would appoint *the* indifferent persons for that purpose, and your petitioner, as in duty bound, will pray.

April term, 1829.

DANIEL HOLMES.

(*Endorsement.*)

Monmouth orphan's court, April term, 1829.

In division of real estate of Edmund Kearny, deceased, petition for division.

The prayer of the within petitioner granted, and the court appoint James Hopping, Edward Taylor, and Leonard Walling, commissioners to divide, &c. JEHU PATTERSON.

At an ophan's court holden at the court-house in Freehold, in and for the county of Monmouth, of the term of April, in the year of our Lord one thousand eight hundred and twenty-nine.

Present, Jehu Patterson, William Lloyd, William J. Bowne, and others, esquires, judges.

In division of real estate of Edmund Kearny, deceased.

Application being made to this court by Daniel Holmes, esquire, in

writing, stating that he, the said Daniel Holmes, and John W. Holmes, had purchased of James P. Kearny, deceased, previous to his death, the equal undivided one seventh part of all the lands of Edmund Kearny, late of the county of Monmouth, deceased; that the said James P. Kearny, Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Anne Kearny, and Mary Eliza Kearny, are the only children and heirs of the said Edmund Kearny, late of the county of Monmouth, deceased, who died without a will and intestate, seized of a considerable real estate in fee simple, in the township of Middletown, in the county aforesaid, by reason whereof the said real estate hath descended to the said James P. Kearny, (who conveyed to your petitioner and John W. Holmes, as aforesaid,) and who now hold the same undivided, as tenants in common; and by reason of the minority of some of the children no division by agreement can take place between them, and therefore praying of this court to order and decree a division of all the real estate of the said Edmund Kearny, deceased, whereof he died seized, in the county of Monmouth, between the said children and others interested, agreeably to law; and whereas the several matters so stated appear to the court to be true, therefore, on the said application, it is ordered and decreed by the court, that James Hopping, Captain Edward Taylor, and Leonard Walling, esq., being three indifferent persons now appointed by the court, do make division of all the real estate held by the said Edmund Kearny, deceased, in fee simple, in the county of Monmouth, by metes and bounds, between the said children and others interested, agreeably to law. And it is further ordered, that the report of the said James Hopping, esq., Captain Edward Taylor, and Leonard Walling, esq., or any two of them, made to the next orphan's court, after the division, in writing, and approved of by the court, shall be conclusive to all parties concerned.

We, James Hopping, Edward Taylor, and Leonard Walling, commissioners within named to make partition of the real estate of Edmund Kearny, deceased, among the several persons therein named, do severally promise and swear, that we will make a fair and just partition of said estate, without partiality, favor, or affection, (if the same be made,) according to the best of our abilities and understanding.

JAMES HOPPING,
EDWARD TAYLOR,
LEONARD WALLING.

Sworn and subscribed before me the 2d day of June, 1829.

JOSEPH TAYLOR,
Justice of the Peace.

We, the subscribers, commissioners appointed by a decree of the orphan's court of the county of Monmouth, in the term of April last past, to make division of the real estate, late of Edmund Kearny, deceased, in the county of Monmouth, between Daniel Holmes, esq., and

John W. Holmes, who purchased of James P. Kearny, deceased, previous to his death, the equal undivided one seventh part of all the lands of Edmund Kearny, late of the county of Monmouth, deceased, and Horatio Kearny, Thomas Kearny, Anastasia Kearny, Catharine Kearny, Anne Kearny, and Mary Eliza Kearny, heirs-at-law of said Edmund Kearny, deceased, some of whom are minors under the age of twenty-one years, do report to the judges of the said orphan's court, that after having been duly sworn before Joseph Taylor, esq., one of the justices of the peace in and for said county of Monmouth, we have caused a survey and map or draught of the premises to be made, and after viewing the same, are of the opinion that the said premises are so circumstanced that a division thereof cannot be made without great prejudice to the interest of the owners. In witness whereof, we have hereunto set our hands and seals this tenth day of July, in the year of our Lord eighteen hundred and twenty-nine.

JAMES HOPPING, [L. S.]
EDWARD TAYLOR, [L. S.]
LEONARD WALLING. [L. S.]

(*Endorsement.*)

Monmouth orphan's court, July term, 1829.

In division of the real estate of Edmund Kearny, deceased.

Report of commissioners.

The commissioners within, by their report in writing, having stated to the court, the land of the said deceased *are* so circumstanced that a partition thereof cannot be made without great prejudice to the owners, and the court being thereof satisfied, do order the commissioners to make sale, &c.

JEHU PATTERSON.

At an orphan's court, holden at the court-house in Freehold, in and for the county of Monmouth, of the term of July, in the year of our Lord one thousand eight hundred and twenty-nine.

Present—Jehu Patterson,
John Hull,
William Lloyd, and others, esquires, judges.

In case of division of the real estate of Edmund Kearny, deceased.

On report of commissioners.

The commissioners appointed in the above case, in the term of April last, namely, James Hopping, Edward Taylor, and Leonard Walling, for the purpose of making division of the real estate of Edmund Kearny, deceased, situate in the township of Middletown, in the coun-

ty of Monmouth, having made their report, in writing, under their seals to this court, at this time, stating that, after having been duly sworn before Joseph Taylor, esq., one of the justices of the peace in and for the county of Monmouth, they caused a survey and map or draught of the premises to be made, and, after viewing the same, are of opinion that the said premises are so circumstanced that a division thereof cannot be made without great prejudice to the interest of the said owners; and it appearing, by satisfactory proof to the court, that the said tract of land or real estate could not be partitioned among the owners and proprietors thereof without great prejudice to their interest, it is therefore ordered and decreed by this court, that the said James Hopping, Edward Taylor, and Leonard Walling, the commissioners aforesaid, do sell the said tract of land or real estate, at public auction, to the highest bidder, giving at least sixty days, notice of the time and place of such sale, by advertisements put up in five of the most public places in the county, and also in one public newspaper circulating in the same county; and it is further ordered, that the said commissioners shall make report of such sale to the next stated term of this court, after such sale, agreeably to the same.

In pursuance of a decree of the orphan's court of the county of Monmouth, made in the term of July last past, appointing us, the subscribers, commissioners for selling the real estate of Edmund Kearny, deceased, in the township of Middletown, in the county of Monmouth, we do report to the judges of the said orphan's court, that after having given at least sixty days' notice, by advertisements set up in five of the most public places in said county, and in a public newspaper circulating in the same, (to wit, the Monmouth Enquirer,) of the time and place, did, on the third and fourth days of November last past, expose to sale, by way of public vendue or outcry, all the lands of said deceased, in such parts or portions, to such persons, and for such sums, as are hereinafter set forth, (to wit:)

Lot No. one, containing $224\frac{8\,8}{100}$ acres, to Isaac K. Lippincott, at $30 per acre - - - - -	$6,744 60
Lot No. two, containing $56\frac{4\,2}{100}$ acres, to Thomas Carhart, for $28 25 per acre - - - -	1,593 86½
Lot No. three, containing $32\frac{8\,5}{100}$ acres, to Amos Walling, for $26 75 per acre - - - -	878 73¾
Lot No. four, containing $18\frac{4\,3}{100}$ acres, to Jonathan Tilton, at $38 50 per acre - - - -	709 55½
Lot No. five, containing $59\frac{5\,3}{100}$ acres, to Ezra Osborn, esq., for $22 50 per acre - - - -	1,339 20
Lot No. six, containing $56\frac{8\,4}{100}$ acres, to Ezra Osborn, esq., for $13 25 per acre - - - -	753 13
Lot No. seven, containing $48\frac{4\,6}{100}$ acres, to Isaac K. Lippincott, for $25 25 per acre - - - -	1,223 61½
Lot No. eight, containing $24\frac{1\,1}{100}$ acres, to Richard C. Burrowes, for $43 per acre - - - -	1,036 73

Lot No. nine, containing $7\frac{34}{100}$ acres, to Isaac K. Lippincott, for $18 50 [per acre] - - -	135 79
	($14,415 22½)
Lot No. ten, containing $16\frac{51}{100}$ acres, to Ezra Osborn, esq., for $11 75 per acre - - - -	194 69¾
Lot No. eleven, containing $59\frac{13}{100}$ acres, to James Sprowl, at $33 50 per acre - - - - -	1,980 85½
Lot No. twelve, containing $26\frac{02}{100}$ acres, to Thomas J. Walling, for $33 per acre - - - -	858 66
Lot No. thirteen, containing $49\frac{42}{100}$ acres, to Amos Walling, for $29 50 per acre - - - -	1,457 89
Lot No. fourteen, containing $40\frac{35}{100}$ acres, to Joseph Carhart, for $7 per acre - - - -	282 45
Lot No. fifteen, containing $61\frac{34}{100}$ acres, to Horatio Kearny, for $12 25 per acre - - -	751 41½
	$19,941 19

Amounting in all to the sum of nineteen thousand nine hundred and forty-one dollars and nineteen cents, the one-half of which, by the conditions of sale, was made payable on the first of April next, when deeds were to be made, and possession of given to the purchasers; the other half was made payable in one year from the first of April next, without interest, by the purchasers giving approved security for the payment thereof.

In witness whereof we have hereunto set our hands and seals, this twentieth day of January, in the year of our Lord one thousand eight hundred and thirty.

JAMES HOPPING, [L. S.]
EDWARD TAYLOR, [L. S.]
LEONARD WALLING. [L. S.]

At an orphan's court, holden at the court-house in Freehold, in and for the county of Monmouth, of the term of January, in the year of our Lord one thousand eight hundred and thirty.

Present, Jehu Patterson,
John Hull,
William Lloyd, and others, esquires, judges.

On application for division of real estate of Edmund Kearny, deceased, and report of commissioners and order for sale.

The commissioners appointed in this case, namely, James Hopping, Edward Taylor, and Leonard Walling, to make sale of the real estate of the said Edmund Kearny, deceased, having made their report in writing to this court, at this term, stating that, in pursuance of the decree of the orphan's court, made in the term of July last past, they do report that, after giving at least sixty days' notice by advertisement set up in five of the most public places in said county, and in a public news-

paper circulating in the same, "to wit," the Monmouth Enquirer, of the time and place, did, on the third and fourth days of November last past, expose to sale, by way of public vendue or outcry, all the lands of said deceased, in such parts or portions, to such persons, and for such sums as herein set forth, amounting in the whole to nineteen thousand nine hundred and forty-one dollars and nineteen cents, the one-half of which by the conditions of sale was made payable on the first of April next, when deeds are to be made, &c., and possession given to the purchasers; the other half was made payable in one year from the first of April next, without interest; all which appearing to the court to be true, therefore the court do approve of the sales so made as aforesaid, and do confirm the same as valid and effectual in the law, and do hereby direct the commissioners aforesaid to execute good and sufficient conveyances in the law to the purchasers accordingly; and the court do further order, that the moneys arising from the sales aforesaid, be paid by the said commissioners to the parties interested in the said lands as aforesaid, their guardian or legal representatives, in proportion to their respective rights in the same, deducting therefrom all legal costs and expenses.

STATE OF NEW JERSEY,
Monmouth county, ss.

I, Henry D. Polhemus, surrogate and clerk of the orphan's court of the county of Monmouth, in the State of New Jersey, do certify the foregoing to be truly copied from the minutes of said court, and from the original papers of file in the surrogate's office of said county.

As witness my hand and seal of office at Freehold, this twelfth
[L. S.] day of August, one thousand eight hundred and forty.

HENRY D. POLHEMUS.

I have examined the reports of sales, and have no recollection of the death of any one of the purchasers named therein, and believe that they are all living at this time.

HENRY D. POLHEMUS.

August 12, 1840.

STATE OF NEW JERSEY,
Monmouth county, ss.

I, Henry D. Polhemus, surrogate and clerk of the orphan's court of the county of Monmouth, in the State of New Jersey, do certify, that the map or draught referred to in the commissioners' report herein above mentioned, was not on file in the office of the surrogate of the county of Monmouth, on the twelfth day of August, 1840, the time the above certificate was given; and I further certify, that I have made diligent search in said office, and that there is no such map or draught now on file in said office.

Witness my hand and seal of office at Freehold, this twenty-
[L. S.] first day of September, eighteen hundred and forty-two.

HENRY D. POLHEMUS.

STATE OF NEW JERSEY,
Monmouth county, ss.

I, Henry D. Polhemus, surrogate and clerk of the orphan's court of the county of Monmouth, in the State of New Jersey, do certify, that I have carefully examined the original papers and records of the orphan's court, respecting the partition of the lands of the late Edmund Kearny, applied for by Daniel Holmes, and ordered at the April term of said court, in the year 1829, and respecting the sale of said lands afterwards ordered upon the same application, viz., at the July term of said court in the same year; and I have examined all the original papers, proceedings, and records, relating to that matter in said court, and I find no proof, nor minutes, nor memoranda of any proof whatever being made, or offered in said matter, to the said orphan's court of any kind, to show to said court that *that* said lands are so circumstanced that a division thereof cannot be made without great prejudice to the owners of the same, (except what is contained in the order of the court of the term of July, 1829.)

I also certify, that Joseph Taylor was appointed the guardian of Thomas Kearny, on the twenty-eighth day of April, in the term of April, 1825; of Catharine Kearny and Anne Kearny, on the twenty-seventh day of October, in the term of October, 1828; and of Anastasia Kearny, on the twenty-eighth day of April, in the term of April, 1829, as appears by the records of the orphan's court.

And I further certify, that no objection or resistance appears from the record of proceedings in this matter, or otherwise, in this office, to have been made to said proceedings of the court, or of the commissioners, as therein set forth by any guardian of said minors, or other persons whomsoever.

Given under my hand and seal of office, this thirtieth day of
[L. S.] September, in the year of our Lord one thousand eight hundred and forty-two.

HENRY D. POLHEMUS.

Evidence.

Commission out of circuit court to George W. Morton, of New York, to take the deposition of George Sullivan, a witness produced on behalf of Thomas Kearny and others, original complainants, and defendants in cross suit, executed the 31st August, 1849, with oaths and certificate in due form. The interrogations put, and answers given, were as follows:

First direct interrogatory. Do you know any of the parties to the above suit, and do you know the subject of said suit? State how you came to know them, and in what relation you stand to them respectively.

Second direct interrogatory. Do you know, and if you do, please to state, how and for what purpose the act of the legislature of New Jer-

sey, mentioned or set forth in the original bill as passed the 9th March, 1841, was obtained, and how it was done?

Third direct interrogatory. Have the heirs ever, at any time, consented or submitted in any way to the passage of the law of the 14th February, 1844, as you know, or for any and what reason believe, and what has been the course in the passage thereof?

Fourth direct interrogatory. Please state any and all the facts and circumstances which have come to your knowledge, material to any of the issues made by the pleadings in this suit, according to your best remembrance, and as precisely as you can.

JAMES S. GREEN,
Solicitor for original plaintiffs,
and to defendants in cross suit.

Cross interrogatories.

First cross interrogatory. Have you not had the sole control and management, as agent and counsel, of said suits, and of the ejectments brought on the part of the plaintiffs and complainants in the original suit, from the commencement to the present time?

Second cross interrogatory. Have not some or all of the complainants in the original suit conveyed their interest in the premises described in said original bill to Anne E. K. Chesebrough, one of said complainants, and if so, who, at what time, and for what consideration?

Third cross interrogatory. Has not the said Anne E. K. Chesebrough conveyed the premises in the original bill described, or some interest in them, to yourself, or to yourself with others; and if so, what, when, to whom, and for what consideration?

Fourth cross interrogatory. Is not the original power of attorney from the complainant in the original bill to yourself irrevocable, and does it not authorize you to take or receive possession of the premises described in the original bill, and receive or take the expenses, costs, and counsel fees for the prosecution of said suits out of said premises, or out of the rents, issues, and profits thereof, or how otherwise?

Fifth cross interrogatory. Were not the direct interrogatories to be propounded to yourself drawn by yourself?

P. VREDENBURGH,
Of counsel with defendants in original suit,
and solicitor and of counsel in cross suit.

Certificate of oath administered by the commissioner to the witness in usual form.

Certificate of the execution of the above commission, by George W. Morton:

I, the above named George W. Morton, do certify, that the oaths to myself, and to my clerk above named, were duly administered on the 24th day of August, current, in obedience to the directions of the above commission, as appears by the preceding certificates; that Rich-

ard E. Stillwell, who certifies as United States commissioner, is well known to me as an authorized commissioner of the United States, in and for the southern district of New York; and I further certify, that the several direct interrogatories contained in the preceding commission having been put to the witness, George Sullivan, on this 24th day of August, 1849, by me, the said George W. Morton, the said George Sullivan answered the same respectively, as follows, to wit:

To the first direct interrogatory he saith, I know all the parties plaintiffs, and some of the opposite parties, viz., John I. Taylor, Isaac K. Lippincott, Edward Taylor, Teresa Walling, and some others. The subject of the suit is fully set forth in the pleadings, and is substantially a claim on the part of the original complainants for the real estate therein described, and claimed upon the legal fact that the descent by law from their late father has never been intercepted nor divested by any legal conveyance of their title to the same by descent; that the order obtained for the sale of the same in 1829 was obtained by fraud, and that the pretended sale under said order was fraudulently made and reported, and confirmation thereof fraudulently obtained; and that the deed of the commissioners, purporting to convey the lots 5, 6, 7, 8, 9, and 10, was void in law, being made in fraud of the statutes of the State for partition and sale of minor's real property held in common, and was fraudulently made against law to conceal the unlawful and fraudulent purpose of said sale, and the conveyance thereof under said order, of all which I became acquainted in my researches into the transaction of said order, and sale, and conveyance, upon the occasion of drawing the original bill and the answers to the cross bill, being of counsel, and solicitor and attorney for the original complainants.

To the second direct interrogatory he saith, some of the children, now Mrs. Jordan and Mrs. Chesebrough, of the late Captain Edmund Kearny, mentioned in the original bill and proceedings, having requested me to investigate their title to their said father's estate therein mentioned, I did so, and advised them that the title under which the tenants claimed lots 5 to 10 was void, and their right by legal descent was not intercepted nor divested by the proceedings in the orphan's court, as set forth in said bills of complaint; they authorized the immediate commencement of actions of ejectment, and two were commenced in the name of all the heirs, one against the tenant of the tavern lot, now pending against Vanderbilt in this court, and the other against Leonard Walling, for certain portions of said parcels in his possession. This was made known to the other heirs, Mrs. Anastasia Thomas and her husband, Mr. Thomas Kearny, and Mr. Horatio N. Kearny, and they have concurred in authorizing the same. I was further authorized to take all such other and further proceedings in law and equity as I might deem expedient. I had served on all the tenants known to me a printed notice of the claim of the heirs, and of their intention to prosecute; stating to said tenants at that time only the fact that their title was defective under the ruling of the supreme court of New Jersey in the case of Den v. Lambert, omitting then, from mere motives

of policy, the imputation of fraud, on which my chief reliance was placed, deeming it impolitic to give offence to persons whom I hoped to engage in amicable compromise; and I suggested to them the retainer of able counsel, but their counsel advised them to apply to the legislature of New Jersey to pass an act for their relief against this claim and those actions at law; and accordingly an application was made by and in behalf of all the tenants and others interested in the whole or parts of the real estate or farm of said Captain Kearny, deceased, called Key Grove, and notice of its presentation, instead of being served on this deponent as attorney of the heirs, was published in a paper printed in Freehold, and no notice thereof was given to this deponent by said petitioners or their attorney, Mr. Vredenburgh, who was then a member of the council; said petition was presented in writing, as this deponent has been informed, signed by many persons, and was referred to a committee of the legislature some time in January or February, 1841. This deponent, attorney as aforesaid, first came to the knowledge of this application through general information, but not until the committee of the council, of which Mr. Vredenburgh was member, had reported to the council a bill, of which a copy marked AA is referred to in the bill and hereto annexed, and this deponent immediately prepared and presented a remonstrance on behalf of the heirs of said Captain Edmund Kearny, deceased, which said original remonstrance, marked A, and a printed copy thereof also marked A, is here produced. It was referred to the committee who reported said bill, and thereafterwards the said committee directed a hearing before it of said parties, petitioners and remonstrants, and a hearing was had upon the grounds taken in said remonstrance, and on affidavits of some of the persons therein charged with fraud. Counsel were heard upon both sides, and the committee thereupon struck out the whole of the first section of said reported bill, and by way of amendment inserted the first section of said bill as it stands now, and having reported the same to the council, that body passed a vote of reference of said act so amended to a joint committee; and afterwards, on or about the 9th day of February, 1841, the said parties were heard by counsel before said joint committee, in the State house, viz., Mr. Vredenburgh and Hon. Judge Dayton of counsel for the petitioners, aed by this deponent as counsel for the remonstrants and heirs of Captain Kearny. The hearing was elaborate on both sides, and before the final action of either branch of the legislature on the committee's report, which was in favor of the bill as amended in the first section as aforesaid, the remonstrants cause their said remonstrance, with the original first section, to be printed, as appears by printed copies thereof distributed to all the members of the legislature, as herewith exhibited, and marked by the commissioner A. And thereupon the said petitioners caused a replication to said remonstrance to be printed and distributed to all the members, of which a copy is herewith exhibited, and marked by the commissioner B; and thereafterwards the said heirs distributed to the members of the legislature the remarks in print, marked B C; and the said report in favor of said bill so amended

as aforesaid, being on its second reading in the assembly, a brief debate occurred, and the same was passed, and on being sent to the council and briefly considered there, it was finally passed, and became a law on the 9th March, 1841; and the said heirs, as evidenced by their bill in equity in this cause, adopted the same as a private act, and relied upon it as such in all their subsequent proceedings in respect to their claim, as being a private act of said legislature to settle the course of legal proceedings in the investigation of the respective rights of said parties to the real estate in question; and this deponent further says, that he was attorney in fact of said heirs in the contest before the legislature, opposed the passage of said bill as first reported by Mr. Vredenburgh as aforesaid, as being intended by the petitioners in possession to preclude the heirs unconstitutionally from their just and legal rights in the premises, and he acquiesced in its final passage because it gave them relief against the frauds imputed, beyond the ordinary and usual remedy and relief at law and in equity.

To the third interrogatory this deponent says, that after the bill in equity in this cause was filed, viz., at the April term of their circuit court of the United States, in the year 1842, and before the defendants had put in their answers to the same, the action of ejectment defended by Oliver Vanderbilt, (Mr. Leonard Walling having then lately deceased, and the action against him abated,) was brought to trial at law before their honors, Judge Baldwin and Judge Dickenson; and his honor, Judge Baldwin, having ruled, in concurrence with his honor Judge Dickenson, that the provisions of said act of 9th March, 1841, requiring the defendants to prove that there was no fraud in the sale, and thereupon charging the jury in effect that the evidence showed and established a clear case of fraud within the provisions of said act, and according to the course of the common law, as it stood unaffected by said act, directed them that as the plaintiffs relied upon the case made by the defendants' own evidence, and this showed a clear case of fraud, there was no fact in dispute for the jury to pass upon, and the plaintiff was entitled to a verdict; but the jurors were divided equally, not upon any question of fact, but upon the ruling of the law by the court, and so they came into court and declared they could not agree, and they were thereupon discharged.

Afterwards, in the year 1842 or '43, the defendants to the original bill having put in their answers, the cause was set down for hearing on the bill and answers. But, before the same could be brought to a hearing, the defendants to the original bill, and others, applied by petition to the legislature of New Jersey for further relief by an act of the legislature in their behalf; and the said petitioners conducted their said application with so great management and design, to conceal their proceedings from this deponent, as the attorney of the heirs, and the heirs themselves, that no notice of said petition, or proceedings thereon, came to their or his knowledge until the 7th day of February, 1844; whereupon this deponent prepared a remonstrance, and had the same printed and presented to the legislature of New Jersey by the

of policy, the imputation of fraud, on which my chief reliance was placed, deeming it impolitic to give offence to persons whom I hoped to engage in amicable compromise; and I suggested to them the retainer of able counsel, but their counsel advised them to apply to the legislature of New Jersey to pass an act for their relief against this claim and those actions at law; and accordingly an application was made by and in behalf of all the tenants and others interested in the whole or parts of the real estate or farm of said Captain Kearny, deceased, called Key Grove, and notice of its presentation, instead of being served on this deponent as attorney of the heirs, was published in a paper printed in Freehold, and no notice thereof was given to this deponent by said petitioners or their attorney, Mr. Vredenburgh, who was then a member of the council; said petition was presented in writing, as this deponent has been informed, signed by many persons, and was referred to a committee of the legislature some time in January or February, 1841. This deponent, attorney as aforesaid, first came to the knowledge of this application through general information, but not until the committee of the council, of which Mr. Vredenburgh was member, had reported to the council a bill, of which a copy marked AA is referred to in the bill and hereto annexed, and this deponent immediately prepared and presented a remonstrance on behalf of the heirs of said Captain Edmund Kearny, deceased, which said original remonstrance, marked A, and a printed copy thereof also marked A, is here produced. It was referred to the committee who reported said bill, and thereafterwards the said committee directed a hearing before it of said parties, petitioners and remonstrants, and a hearing was had upon the grounds taken in said remonstrance, and on affidavits of some of the persons therein charged with fraud. Counsel were heard upon both sides, and the committee thereupon struck out the whole of the first section of said reported bill, and by way of amendment inserted the first section of said bill as it stands now, and having reported the same to the council, that body passed a vote of reference of said act so amended to a joint committee; and afterwards, on or about the 9th day of February, 1841, the said parties were heard by counsel before said joint committee, in the State house, viz., Mr. Vredenburgh and Hon. Judge Dayton of counsel for the petitioners, aed by this deponent as counsel for the remonstrants and heirs of Captain Kearny. The hearing was elaborate on both sides, and before the final action of either branch of the legislature on the committee's report, which was in favor of the bill as amended in the first section as aforesaid, the remonstrants cause their said remonstrance, with the original first section, to be printed, as appears by printed copies thereof distributed to all the members of the legislature, as herewith exhibited, and marked by the commissioner A. And thereupon the said petitioners caused a replication to said remonstrance to be printed and distributed to all the members, of which a copy is herewith exhibited, and marked by the commissioner B; and thereafterwards the said heirs distributed to the members of the legislature the remarks in print, marked B C; and the said report in favor of said bill so amended

as aforesaid, being on its second reading in the assembly, a brief debate occurred, and the same was passed, and on being sent to the council and briefly considered there, it was finally passed, and became a law on the 9th March, 1841; and the said heirs, as evidenced by their bill in equity in this cause, adopted the same as a private act, and relied upon it as such in all their subsequent proceedings in respect to their claim, as being a private act of said legislature to settle the course of legal proceedings in the investigation of the respective rights of said parties to the real estate in question; and this deponent further says, that he was attorney in fact of said heirs in the contest before the legislature, opposed the passage of said bill as first reported by Mr. Vredenburgh as aforesaid, as being intended by the petitioners in possession to preclude the heirs unconstitutionally from their just and legal rights in the premises, and he acquiesced in its final passage because it gave them relief against the frauds imputed, beyond the ordinary and usual remedy and relief at law and in equity.

To the third interrogatory this deponent says, that after the bill in equity in this cause was filed, viz., at the April term of their circuit court of the United States, in the year 1842, and before the defendants had put in their answers to the same, the action of ejectment defended by Oliver Vanderbilt, (Mr. Leonard Walling having then lately deceased, and the action against him abated,) was brought to trial at law before their honors, Judge Baldwin and Judge Dickenson; and his honor, Judge Baldwin, having ruled, in concurrence with his honor Judge Dickenson, that the provisions of said act of 9th March, 1841, requiring the defendants to prove that there was no fraud in the sale, and thereupon charging the jury in effect that the evidence showed and established a clear case of fraud within the provisions of said act, and according to the course of the common law, as it stood unaffected by said act, directed them that as the plaintiffs relied upon the case made by the defendants' own evidence, and this showed a clear case of fraud, there was no fact in dispute for the jury to pass upon, and the plaintiff was entitled to a verdict; but the jurors were divided equally, not upon any question of fact, but upon the ruling of the law by the court, and so they came into court and declared they could not agree, and they were thereupon discharged.

Afterwards, in the year 1842 or '43, the defendants to the original bill having put in their answers, the cause was set down for hearing on the bill and answers. But, before the same could be brought to a hearing, the defendants to the original bill, and others, applied by petition to the legislature of New Jersey for further relief by an act of the legislature in their behalf; and the said petitioners conducted their said application with so great management and design, to conceal their proceedings from this deponent, as the attorney of the heirs, and the heirs themselves, that no notice of said petition, or proceedings thereon, came to their or his knowledge until the 7th day of February, 1844; whereupon this deponent prepared a remonstrance, and had the same printed and presented to the legislature of New Jersey by the

speaker of the assembly, and by copies delivered in the assembly to each of its members, and in council to each of its members; the original of which, being lost, is not produced as an exhibit to be marked by the commissioner; but, instead thereof, a printed copy thereof, marked by the commissioner R, is now produced.

At the time of the presentation of their said remonstrance by the heirs, viz., on the 12th day of February, 1844, the bill, precisely as it was afterwards passed on the 14th February, 1844, was passed by the council, and was on its second reading in the assembly. The said remonstrance was laid on the table, and immediately afterwards the said bill, as it now stands, was finally passed, and became a law. Whereupon this deponent, in behalf of said heirs, in the same session of the legislature, and while it was still in the power of the legislature to repeal the said law so passed the 14th February, 1844, prepared and presented a further remonstrance against said bill; of which, the original being lost, a printed copy thereof is here exhibited, and marked RR, by the commissioner, as the same were presented and delivered to the legislature, viz., upon the 24th day of February, 1844, the printed copies being delivered to every member of the legislature in his place; whereupon the two branches of the said legislature concurred in a resolution referring said last mentioned remonstrance to a joint committee, before whom this deponent, in behalf of the said heirs, appeared, and claimed the rights of the heirs, as set forth in said remonstrance, and protested against the passage of said act as unconstitutional, and in violation of their constitutional rights, which they never would relinquish. But said remonstrance was in vain. The committee reported against the prayer of the said heirs, as appears by copy of their report, marked Q, by the commissioners; and for a confirmation of these statements this deponent refers to the public records or minutes of the proceedings of said legislature at and about the time herein mentioned. And this deponent further states, that it is not according to the usual practice of said legislature, in such and the like cases, to cause the original petitions, and remonstrances, and replications, and evidence in support of the same, to be put on file in the office of the secretary of state; but there is some rule or order, as this deponent is informed and believes, which requires all parties interested in the subject matters of any petition to be notified; and in compliance with this rule or order, some notice of the first application was published as aforesaid, and some notice of the application of the original defendants, and others, for the said act of 14th February, 1844, was made; both being published in a paper not likely to be seen or heard of by the heirs, or this defendant, their attorney.

And this deponent, having stated how the said acts of *of* 9th March, 1841, and 14th February, 1844, were obtained by the original defendants in this suit, and others, in order to show the action of the heirs in respect to these laws, further states, that they were opposed on the ground that they were sought to defeat the just legal rights of the claimants as heirs to their said patrimony. This deponent insisting, as

their attorney in fact before the legislature, that the law of the land, as established by known decisions, and the well known jurisdiction of the courts of law and equity, might be sufficient to establish the legitimate rights of the parties in the contest. And some members of the legislature, as this deponent believes, having discovered in the conduct of said original defendants, in their application for a law in general terms to cover the particular exigencies of said defendants' case, deemed it expedient to interpolate the special provisions by which the burthen of exonerating the commissioners and other parties implicated in the unfairness of the transactions in the orphan's court, and the proceedings, from all fraud and unfairness therein, should be cast upon all parties claiming under said proceedings; and this being found on trial, as aforesaid, somewhat difficult to be accomplished, even although the claimants permitted all the parties interested in the suit to testify therein, without exception, insomuch that the truth, as they testified it to be, was strong against them, the defendants thereupon applied to the legislature for the act of 14th February, 1844, for the purpose of being thereby relieved against the legal effect of their own statements in their own favor, taken as true, and from the legal effect of all evidence in the case howsoever, except as to direct, plain, and positive proof of fraud in the commissioners alone; hereby intending to exclude all proof of fraud in the purchasers with them, and to suspend in this particular case the established common law in favor of these parties, defendants, while it should be and remain the same as between all others being citizens of the State of New Jersey, or otherwise, except these parties, complainants, as citizens of other States alone; this purpose being the only effectual means of saving the original defendants from the due course of the law as it stands established between all other parties in precisely consimilar cases.

The heirs have never acted in relation to either of said laws of New Jersey except through my agency, and I have steadily and continuously made opposition to the law of 14th February, 1844, from the moment I had notice of it until its final passage, and the subsequent refusal of the legislature to repeal it, manifested by their acceptance of the committee's report against the petition of the heirs for repealing said act as above. I have deposed, and at all times in court, too, I have opposed the said law in behalf of said heirs, and am retained to oppose the same to the utmost in this and all other courts where this cause, and others to the same effect, may come to be heard.

To the last direct interrogatory he saith: I do not at this time remember any thing thereof more material to either party, but will add whatever may occur to me hereafter on the close of the taking of this deposition.

GEORGE SULLIVAN.

And I, the said George W. Morton, do further certify, that the answers of said George Sullivan to the cross interrogatories, being severally put to said witness, were as follows:

To the first cross interrogatory he saith, that he has always had associate counsel with him in the said suits, and felt himself always bound by their advice, and the directions of his clients. The ejectment suits were commenced in conjunction with Mr. Miller, of Jersey city; but Mr. Miller acted as attorney merely in the commencement of those suits, and shortly after their commencement transferred them to Mr. Spencer, and since that time Mr Miller has taken no part in the prosecution of these claims, and is not now attorney or of counsel in the cause, or of the heirs. This present suit in ejectment was commenced under and upon the special direction, authority, and pecuniary responsibility of Thomas Kearny, then reputed to be worth two hundred thousand dollars of his own and wife's property, and he advanced at different times several hundred dollars to defray expenses; and others of the claimants have also made very considerable advances to cover all expenses of this and other suits; and I have always considered, and do now consider, this suit, and all suits to maintain this claim, as under the absolute control and management of the claimants, and whether it shall proceed or not it is theirs to determine; and I have no power nor right whatever to interfere with, or prevent the exercise of, their own mere will and pleasure in the premises, in respect to the prosecution of these claims.

To the second cross interrogatory he saith, that Mrs. Thomas and her husband conveyed her share in mortgage to Mrs. Chesebrough, before her marriage, by mortgage deed, to secure a debt of Mr. Thomas and herself, therein mentioned, and by certain other deeds at the same time executed.

This conveyance is in fact, and in law, a mere mortgage, although a release of all right in equity was executed, in order to exclude any claims of Mr. Thomas. But these claims of his are finally extinguished by their divorce, to which Mr. Thomas submitted, as appears by documents on file in this cause, and by the fact of his subsequent marriage with another lady in Washington city, where he now resides.

There was also a conveyance by Thomas Kearny and his sister Catharine, to their sister, Mrs. Chesebrough, by the name of Anne E. Kearny, purporting to be an absolute conveyance; but she executed at the same time a deed and declaration of trust, declaring that she held this only for the purpose of raising, upon a mortgage of their shares, such pecuniary means as might be needed after the death of his wife, and loss of his ready means, in order to defray the expenses of the suit. A mortgage was prepared and executed to myself and my law partners, Messrs. James and George Bowdoin, so that we might assign the same to any person who should advance money for that purpose, but as yet no money has been obtained upon it, and the document remains in my hands to be used for that purpose, as the claimants may direct, and not otherwise.

To the third cross interrogatory he saith, that said Anne E. Kearny, now Mrs. Chesebrough, has not conveyed any part of the premises to

him, except as stated in the answer to the second cross interrogatory, and for the purpose therein stated, and not otherwise, in any manner.

To the fourth cross interrogatory he saith, that the original power of attorney mentioned in this interrogatory has been recorded, with the deeds before mentioned, in the clerk's office at Freehold, and this deponent refers to them, or to copies thereof, for its legal effect. This deponent does not consider said power as irrevocable. This term, in that instrument, as in most powers of attorney, is, in legal effect, a mere stipulation that the constituent will not do anything to defeat the just and lawful purpose expressed or implied in such power; and this form of stipulation operates effectively to that end, and nothing more, by giving jurisdiction to a court of equity to restrain a constituent from injustice. Such was this deponent's understanding, and still is, of the purpose of inserting the word irrevocable; and such, in his view, is its legal effect. And this deponent has no legal right of possession vested in him, but only a power to be executed under the direction of a court of equity, to fulfil the legal purposes intended by said constituents in their said power of attorney.

To the fifth cross interrogatory he says, the direct interrogatories to be proposed to himself were drawn by himself, as counsel in the cause with said claimants, and this deponent considers they had a perfect legal right to claim this service at his hands, although he be the witness to answer them.

And this deponent, in further answer to the general interrogatory, further says, that the facts and circumstances relating to the opposition of the heirs to the passage of the said laws of the 9th March, 1841, and 14th February, 1844, are well known to Mr. Vredenburgh, Mr. Dayton, and Gov. Vroom, who were of counsel for the original defendants at said times, the two first in 1841, and all of them in 1844.

This opposition was also known to all the defendants, and to all persons interested in these acts, this deponent believes, many of them being in actual attendance upon the legislature at the times said bills respectively were under consideration of the legislature.

GEORGE SULLIVAN.

And I do further certify, that the said several answers having been duly taken and written down, were signed by the said witness, George Sullivan, in my presence, on this thirty-first day of August, 1849, the several exhibits hereto annexed by me being the papers or documents respectively referred to by said witness in his said answers, and produced to me by him to be marked and annexed as exhibits.

In testimony of the due execution of said commission I have hereunto set my hand and seal, this 31st day of August, 1849.

G. W. MORTON,
Commissioner.

Exhibit A.

Petition and remonstrance of the heirs of the late Edmund Kearny, against the passage of the bill now in council, No. 14, hereto annexed, which contains provisions subversive of their vested legal rights to their father's estate of Key Grove.

STATE OF NEW JERSEY.

To the honorable the council and general assembly of the State of New Jersey:

The petition and remonstrance of Anne E. Kearny, Catharine Kearny, Anastasia Thomas, wife of George C. Thomas, jr., all of the city and State of New York, and Thomas Kearny, of Clinton, in the State of Mississippi, and Horatio N. Kearny, of Zanesville, in the State of Ohio, children and heirs-at-law of the late Captain Edmund Kearny, of Key Grove, now known by this name and the names of Key Port and Lockport, in the township of Middletown, and county of Monmouth, in the State of New Jersey, the said George C. Thomas, jr., in the right of his wife, concurring, humbly shows:

That your petitioners' said late father died seized, in fee simple, of a large real estate called Key Grove, the estate above mentioned, situate in the township of Middletown aforesaid, containing by estimation several hundred acres of land, with the shore appurtenant upon Raritan bay. And your petitioners were, at the time of their said father's death, minors, and all of them, except said Horatio, under the guardianship of Joseph Taylor, who became a purchaser of part of said property, as hereinafter stated, while as yet he was such guardian. That their said father died on the 30th day of December, in the year 1822. That said estate is represented by the map thereof, drawn by Leonard Walling, in June and October, 1829, herewith exhibited. That it was divided into numerous fields and pastures, all enclosed by an exterior or boundary fence, and appurtenant to the mansion-house occupied by their said late father, being the only dwelling-house, except a farm-house, upon the premises. That some part of said estate was fine arable land, but the greatest part of said estate was covered with a large growth of valuable forest trees, fit for timber. That said estate produced, in rents and profits, after their father's decease, for several years, three hundred and fifty dollars and upwards, and a large income might have been realized out of said estate by a judicious sale of the timber and fuel thereon; but the guardian of your petitioners suffered said estate to be sold, nay, collusively joined with others in the sale thereof, and your honorable body is now applied to, indirectly, in the form of a bill, with general provisions therein, to give aid in defeating the actions which your petitioners have instituted, and intend to institute, for the recovery of their said inheritance. And your petitioners, in explanation of their humble remonstrance against the passage of a certain bill, now before your honorable body, entitled "An act supplementary to the act entitled an act to ascertain the power and authority of the ordinary and

his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of this State," do further show, that their eldest brother, James P. Kearny, became twenty-one years of age within two days after his said father's decease. That said James was educated a physician, and being in need of money, he mortgaged his interest in said estate on the 9th of December, 1823, to William Forman, to secure the sum of four hundred dollars, which said Forman had loaned to him, by his said Forman's notes, payable at future days; and afterwards the said James P. Kearny sold and conveyed all his interest in his patrimonial estate to Daniel Holmes, esquire, and John W. Holmes, for sixteen hundred dollars, and shortly afterwards the said James P. Kearny died. That afterwards, viz., in April, 1829, the said mortgage from said James P. Kearny to said Forman was assigned to said Daniel and John W. Holmes; and afterwards, viz., at the April term, in 1829, of the orphan's court for the county of Monmouth, the said Daniel Holmes, in his own behalf, and also for said John W. Holmes, applied by petition to said orphan's court for an order of partition of said estate, ostensibly for the purpose of obtaining a severance of the share which they held as grantee of said James in the said estate. And thereupon Leonard Walling, James Hopping, and Edward Taylor were appointed commissioners to divide said estate, and they were sworn to fulfil this duty, as appears by the certificate of said Joseph Taylor, guardian as aforesaid, and acting as a justice of the peace on this occasion. Said oath was administered upon the 5th day of June, 1829; and upon the 10th [day] of July next following, the said commissioners made their report, that they had caused a survey and map of the premises to *to* be made, and that the said premises were so circumstanced that a division thereof could not be made without great prejudice to the interest of the owners. No opposition was made to this report by the guardians and representatives of your petitioners. No satisfactory proof, none indeed of any kind, was offered, as the law required, then as now, there should be, to show the necessity of a sale; all which appears from the proceedings of said court, and the order of the said orphan's court endorsed upon the original report of said commissioners.

And your petitioners further show, that the order for sale, nevertheless, expressly recites that satisfactory proof, such as the law requires, had been exhibited, although in fact and in truth, no such proof had been exhibited; but the recital thereof was unfounded and untrue, as appears by the original order of Judge Patterson, endorsed upon the original report.

And your petitioners humbly insist that this recital is an error in the record, which may be disproved by evidence before any court of competent jurisdiction; and that the order of sale granted thereupon by the said orphan's court is not sustained upon the foundations and pre-requisites most rightfully and necessarily prescribed and directed by law for the security of orphans; and yet this order of sale would be made valid by the provisions of said bill, which proposes to enact, among

other things, retrospectively, that any and every sale shall be made valid and effectual in the law, where a sale has been ordered by an orphan's court, and one of the commissioners has departed this life, and the survivors shall at any time afterwards join in executing the conveyance which the court had ordered, and which had not been executed by all the commissioners; a provision exactly adapted to cover indirectly the defect of legal foundation for the order of sale in your petitioners' case, by putting the validity of the sale hereafter on the mere facts that a sale had been ordered, and that the conveyance which the court had ordered had not been executed, and that one of the commissioners had in mean time deceased, and the survivors had made the conveyance ordered.

And your petitioners further show, that the prescribed foundation for an order of the orphan's court directing conveyances, viz., a report of the sale, was not made in their case, but, on the contrary, the semblance of a report made by the commissioners was substantially defective, and is now incapable of amendment by reason of the death of one of said commissioners, viz., James Hopping. The said report omitted to state, upon oath, that the persons seemingly put forward as purchasers were the highest bidders; the contrary being the fact, as your petitioners are able to show. And yet, by force of the provisions of the said proposed bill, the conveyance by the two surviving commissioners will be made valid upon the mere facts that a sale had been ordered and conveyances directed, thus precluding all questions of the legal sufficiency of said order and direction, however the same may be questionable upon all other grounds of law and equity.

Your petitioners herewith present a certified copy of said report, by which it appears, and this copy is correctly made from the original report, that the commissioners omitted all mention of the material facts, who were the highest bidders at said auction; and, especially, they do not state upon oath that the persons who are put forward to the court as purchasers were the highest bidders, or, indeed, that they bid any thing, except by implication, and this so evasively, that all the effect and penalties of a violated oath are eluded.

And your petitioners further show, that prior to the application by said Daniel Holmes for an order of partition to divide their said estate, a company of several persons was formed to purchase the whole or the greater part thereof, with a view to the convenient laying out of the streets and wharves, and other accommodations proper for a seaport and a compact town, upon a site so favorable and obviously well placed for such a purpose; and the application for a partition was not made without a secret expectation that the commissioners would report that a sale of the whole estate would be necessary.

The said company consisted of said Leonard Walling and James Hopping, commissioners as aforesaid, and Joseph Taylor, guardian as aforesaid, Isaac K. Lippincott, Ezra Osborn, John Hopping, David S. Bray, John *T.* Taylor, and Daniel Holmes; but said Holmes afterwards withdrew from said association. And your petitioners sub-

mit, that such an association, of whom one person was guardian of minors interested in said property, and two others were to be commissioners to appoint the time and fix the conditions of sale, could not fulfil its purpose equitably and justly in respect to orphan's property placed by an order of sale of the orphan's court under their absolute disposal; and this your petitioners are able to show was in fact their own unfortunate case.

It is quite demonstrable that several persons thus associated might control the time and conditions of sale favorably to their own views, and in effect repress the disposition of others to bid for any parcel of such an estate; and so, indeed, the fact was. The time of sale was fixed late in the fall, and the conditions of sale made known only a short time previous to said sale, stipulated for the delivery of deeds of conveyance on the payment of one-half of the purchase money, but required no security for the payment of the residue. An understanding was arranged between certain persons attending the sale, and the person acting as auctioneer at the sale substituting private tacit signals for open, public, and notorious bids. That other persons, as your petitioners are well informed and believe, attended the sale of said estate, and contended with the person acting as auctioneer that their bids were the highest, but said auctioneer had taken a bid from some person unperceived by said other bidders, and the lot or lots were struck off to some private bidder, in despite of the remonstrances of said other bidders, who had not been apprised of any other higher bid than their own, although said other bidders were willing to bid yet higher for said estate, or parts thereof. And your petitioners humbly insist, that by the provisions of the bill against which they remonstrate, the conveyances of the surviving commissioners to the persons seemingly reported as purchasers, would make such conveyances valid, notwithstanding these flagrant violations of the spirit and intention of the laws designed for the protection of orphans.

And your petitioners further show, that the said commissioners caused the map of said estate herewith presented to be made by said Leonard Walling, dividing said estate into certain fifteen lots, which are bounded on said map by the double red lines thereon. That among other incidents of said sale the lots numbered 5, 6, 7, 8, 9, 10, were bid for by Isaac K. Lippincott, Ezra Osborn, and Richard S. Burrowes, and struck off to them; but the commissioners, in their deed of said lots, afterwards executed to John I. Taylor, recite as of their own knowledge, that said lots were bid for by said Lippincott, Osborn, and Burrowes, in behalf of said John I. Taylor, and for his own use and benefit; and yet it appears of record in the registry office of said county, that the said persons therein above named as a company were tenants in common of said lots with said John I. Taylor, and thereupon they empowered him to sell and dispose of the same, and to execute deeds of conveyance accordingly. And it further appears of record as aforesaid, that said John I. Taylor sold several parcels of said lots, shortly after said conveyance to him, for considerations in

money, exceeding by two hundred per cent. the purchase money bid by said persons for the lots aforesaid. And your petitioners humbly insist, that by force of the provisions of said bill, against which your petitioners remonstrate, all these fraudulent acts and doings may be closed against investigation, and their legal tendency to invalidate said sales may be excluded from all consideration of a judicial tribunal at law, if the defendants in certain suits now pending should produce title under the conveyance of said surviving commissioners, the said Leonard Walling and Edward Taylor, founded upon said bill enacted and made the law of the State.

And your petitioners further show, that after the said map had been exhibited to the orphan's court by the commissioners, with their report of the said sale, they retained said map, and having caused part of said lots to be divided among said associates, and the names of said Leonard Walling, James and John Hopping, and Joseph Taylor, and others, to be written thereon within the lots designated in black lines by said Leonard Walling himself, in his own handwriting, as shown by the map herewith exhibited as an exact copy thereof, they, the said commissioners, retain said original map so altered, and still retain it; and although requested by the surrogate to return the same to his office, the said Walling has not done so; and although requested by your petitioners, through their counsel, to deliver him a copy thereof for their use, the said Leonard Walling has not done so, and your petitioners would at this time have been without the knowledge thereof, if they had not been so fortunate as to obtain a copy thereof as it now is, without the knowledge of said Walling.

And your petitioners, for the further information of your honorable body, humbly show, that shortly after said pretended sale of said estate, the timber and fuel growing thereon was in fact sold for more than double the amount of the purchase money realized on said sales, thus showing the value of said estate, and the practicability of their guardian's realizing a large income therefrom during your petitioner's minority, and also the duty devolving upon him to resist said application for the sale of said estate, and the further duty of resorting to a court of chancery for an order or decree to protect his wards against the views of a company so entirely known to himself.

And your petitioners, for the further information of the honorable the council and the general assembly, beg leave to refer to the printed statement of their case, with the advice of their counsel thereon, herewith presented, and to the decision of the supreme court of New Jersey, in the case of Den vs. Lambert, 1 Green's Reports, page 182; in which decision said court adverts to the public policy of guarding against frauds in sales of orphan's property under orders of orphan's courts, by strictly enforcing the provisions of the law in respect to such sales, so that said courts may certainly know who in fact are the real purchasers of orphans' estates.

And your petitioners humbly remonstrate against the passage of said

bill, because the object thereof is evidently to protect the persons who became the first purchasers in fact of your petitioners' said inheritance. That your petitioners have commenced two actions of ejectment, one against the said Leonard Walling, and the other against a grantee of said company, or some of them, under the deed of said John I. Taylor, as their attorney. That your petitioners are justly and equitably entitled to recover their said inheritance against the present tenants in possession, who will have legal recourse against said original purchasers and wrong-doers upon their covenants of warranty; and were it otherwise, the said tenants, now in possession, could have no just cause of complaint or pretence of hardship upon them, because the conduct of said commissioners has been notoriously questioned in said county of Monmouth; and the records thereof plainly showed at all times the grossest irregularities, perpetrated in the face of the law, of the public decision of the supreme court, in the case of Den vs. Lambert; error just previously made by that tribunal. And lest your honorable body should impute unreasonable delay to your petitioners in prosecuting their claims, your petitioners, especially the daughters of the said late Captain Kearny, further show, that the said Horatio removed to Zanesville, in Ohio, and the said Thomas Kearny removed to Mississippi, and Anne, the youngest of said daughters, has but recently come of age.

And your petitioners submit to the honorable the council and general assembly of the State of New Jersey, whether your honorable body can, consistently with law and equity, and the constitutional principles of a just government, interfere in any manner with the exercise of the judiciary power, in cases actually pending in any judicial tribunal of the country, or ought in any manner to legislate for particular cases in favor of a particular interest, in respect to any controversy or claim actually made, and in due course of determination, before the judicial authority of the Union; or can or ought in any manner to interpose where the rights of property have been fixed under long existing and hitherto approved laws.

And your petitioners humbly hope that your honorable body will not countenance any attempt to obtain, indirectly, and under the guise of a general law, the powerful interposition of the legislative authority of this State to legalize proceedings so glaringly perpetrated in violation of laws which were designed to guard and protect orphans against the temptations to which guardians and commissioners are exposed. But your petitioners humbly hope that your honorable body will rather multiply the guards and checks against possible frauds upon orphans, than relax existing regulations in this respect, and thereby make such frauds more easy to be perpetrated and concealed, as your petitioners humbly suggest must needs be the tendency of such provisions as are contained in the bill, against which your petitioners humbly and most respectfully beg leave to remonstrate.

And your petitioners, in conclusion, beg leave to invoke the protec-

tion of your honorable body in the premises, and as in duty bound they will ever pray.

ANNE E. KEARNY,
CATHARINE KEARNY,
GEORGE C. THOMAS, Jr.,
ANASTASIA K. THOMAS,
HORATIO N. KEARNY,
By his attorney, GEORGE SULLIVAN,
THOMAS KEARNY,
By his attorney, GEORGE SULLIVAN.

Council No. 14.

An act supplementary to the act, entitled an act to ascertain the power and authorities of the ordinary and his surrogates to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of this State.

Sect. 1st. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, that whereas it has sometimes happened that after lands have been struck off by commissioners, appointed by the act to which this is supplementary, to the highest bidder, and the commissioners have reported said sale or sales to the next stated term of the orphan's court after the sale, where such lands may lie, and the said court have approved such sale, and confirmed the same as valid and effectual in law, and have by rule of said court directed the commissioners to make good and sufficient conveyances in the law to the purchaser or purchasers of such tract or tracts of land so sold, the said commissioners have executed conveyances to some person or persons other than the person or persons to whom the tract or tracts of lands were struck off by the desire or with the consent of the person or persons to whom the said land was struck off as aforesaid, and the purchase money paid:

Be it enacted, that all such conveyances shall be as good and effectual, and valid in the law, as if made to the person or persons to whom the same was struck off as aforesaid.

Sect. 2d. And be it further enacted, that in all cases wherein an order hath heretofore been made, or shall hereafter be made, by the orphan's court of any county in this State, by virtue of the act to which this is supplementary; and of the act, entitled an act supplementary to the act entitled an act for the more easy partition of lands held by copartners, joint tenants, and tenants in common; and the act entitled an act to ascertain the power and authority of the ordinary and his surrogates to regulate the jurisdiction of the orphan's court of the several counties of this State, in which the said court hath ordered and directed, or may hereafter order and direct, three commissioners to execute good and sufficient conveyances in the law to the purchaser or purchasers for the tract or tracts of land, or real estate sold, or which hereafter

may be sold, by virtue of such order; and one or two of the said commissioners shall or may have departed this life before a deed or deeds of conveyance may have been executed in pursuance thereof, and such surviving commissioner or commissioners have executed, or shall execute, conveyance or conveyances to the purchaser or purchasers; and in such case the said conveyance or conveyances shall be as good, valid, and effectual in law, as if the same had been or shall be made by all the commissioners in their lifetime.

Exhibit B.

STATE OF NEW JERSEY.

To the honorable the legislative council and general assembly of the State of New Jersey.

The petition of the subscriber respectfully showeth:

That whereas a bill has been introduced into one of your honorable bodies, viz., the legislative council, entitled "an act supplementary to the act entitled an act to ascertain the power and authorities of the ordinary and his surrogates to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of this State," for the relief of innocent purchasers and owners of real estate in this State, whose titles may be affected by a decision of our supreme court in the case of Den vs. Lambert, 1 Green's Report, page 182, and others whose titles may be defective for want of technical formality, &c.; and whereas a petition and remonstrance against the enactment of said bill into a law has been presented to your honorable bodies, imputing fraud to the commissioners appointed by the orphan's court of the county of Monmouth, to make partition of the lands of Edmund Kearny, deceased, and presenting to your honorable bodies many erroneous statements of the transactions and motives of said commissioners and the purchasers thereof:

Your petitioner, therefore, in behalf of himself and others in interest, begs leave to present to your honorable bodies a brief statement of the facts in relation to the sale and transfer of said property, to show some of the misstatements contained in said petition and remonstrance. The preliminary details of the application for division, appointment of commissioners, laying out the property into lots, &c., being fully stated in said petition and remonstrance, your petitioner deems it unnecessary to repeat them.

The property, having been duly advertised according to law, was offered for sale on the third of November, 1829, and about two or three lots were sold on that day. Lot No. 1, containing two hundred and twenty-four acres, with the buildings, was set up, but for want of time to get through, the sale was adjourned until the next day. On the second day of sale, lot No. 1 was struck off to your petitioner before dinner. Your petitioner, the commissioners, and other persons attending said sale, dined at the public house of Septimus Stephens, at

Brown's point, of which he was the keeper and half owner, and which stands within three hundred yards of the line of said Kearny property, and within half a mile of the now village of Key Port. Said Stephens talked much, and appeared troubled because, as he said, he had understood that Joseph Ellis and some other persons living at Middletown Point intended to buy the fishing point lot, on which was an eligible place for a landing; and if they should, they would not make or allow much improvement to be made thereon, to rival the business of Middletown Point; and that if he was able he would buy it himself, rather than it should go into their hands.

In a conversation between said Stephens, Daniel Holmes, and your petitioner, it was proposed that a company should be made up to purchase said lot to create competition with the bidders from Middletown Point, and Daniel Holmes at once proceeded to look for persons who would join in the purchase, and shortly after reported that he had found several. It was therefore agreed to have said lot purchased on said joint account.

This arrangement, according to the best recollection and belief of your petitioner, occurred during the time the sale was suspended for dinner, on the second day of sale. Richard C. Burrowes, who was one of said company, was selected to be the bidder. After dinner said lot was set up and struck off to said Burrowes, at $43 per acre, he having bid that sum in an audible voice, and after due notice being given to all present. The bid was claimed by John P. Vanpelt, one of the bidders for Middletown Point, as being made by William Walling, his agent, who was to bid as long as said Vanpelt gave a certain signal, which said agent alleged was discontinued, and he discontinued bidding; and it was then, and still is, the opinion of said William Walling, that it was a mistake on the part of said Vanpelt. Said Joseph Ellis and William Little, of Middletown Point, were to be partners in the purchase with said Vanpelt. The subject of the right to the purchase was then discussed by the persons present, and considered by the commissioners, who decided that it was fairly sold, with which most of those present appeared to acquiesce. Vanpelt proposed to have it again set up, which Burrowes refused to allow. After said fishing point lot, (No. 8,) containing twenty-four and eleven hundredths acres, was sold, it was proposed that lot No. 9 should be purchased on said joint account, and agreed that your petitioner should be the bidder, and he was the purchaser; and also lot No. 7, in the same way.

After these were sold, and while the sale was progressing, it was agreed, as they were sold one at a time, to add them to the joint interest, and that by consultation of only part of the company; and they were accordingly bid for by, and struck off to, Ezra Osborn. Afterwards, the remaining lots were sold to various individuals, and among others, one to Horatio Kearny, one of the heirs, who was there and attended the sale, and also one of the company on whose joint account the said purchase was made.

The lots so purchased on said joint account were as follows:

No. 5,	59.52	acres,	at	$22	50	by E. Osborn,	$709 55½
" 6,	56.84	do.	"	13	25	" E. Osborn,	753 13
" 7,	48.56	do.	"	25	25	" I. K. Lippincott,	1,225 61½
" 8,	24 11/100	do.	"	43	00	" R. C. Burrowes,	1,036 73
" 9,	7.34	do.	"	18	50	" I. K. Lippincott,	135 79
"10,	16.57	do.	"	11	75	" E. Osborn,	194 69¾
Cont'g	212.94	acres, and amounting to					$4,053 51

The original purchasers were Septimus Stephens, in lot No. 8 only, and in all the lots, Daniel Holmes, Horatio Kearny, Richard C. Burrowes, Primrose Hopping, Ezra Osborn, and Isaac K. Lippincott. After the sale, Daniel Holmes, Horatio Kearny, Septimus Stephens, and Richard C. Burrowes sold out their shares, and David S. Bray, John Hopping, James Hopping, Leonard Walling, John I. Taylor, and Joseph Taylor became partners in said joint interest, but when, in what way, or the particulars as to such transfers, your petitioner cannot now give any particulars, other than the statements made by Richard C. Burrowes, that he sold to Ezra Osborn, at an advance of forty dollars, and that of Daniel Holmes, that he sold out his share at an advance of thirty or forty dollars, soon after the vendue. Your petitioner respectfully begs leave to call to the notice of your honorable bodies a few of the misstatements contained in said petition and remonstrance of the heirs of said E. Kearny, deceased.

It is therein stated that the premises produced in rents and profits three hundred and fifty dollars a year and upwards; whereas the whole was rented several years at two hundred and sixty dollars, with a small additional gratuity, from sales of oysters in the creek, when tenant went on it; and for one or two years, only at three hundred dollars, without any income to the heirs from other sources; and the interest of the purchase money received amounted to upwards of $1,000 a year, being more than a three-fold increase, which was necessary for the education and maintenance of the minor children; and your petitioner believes the guardian consulted the true interest of his wards in assenting to said sale. The assertion that the commissioners required no security for the residue, or second payment, is not founded in fact; and as to substituting private signals for open bids, the evidence had on that subject shows that to have been used by the opposing bidder in the case referred to, and not the purchasers. It is evident to every person acquainted with the property, that the division of the property into lots was judicious and very conducive to the interest of the heirs.

The assertion that, prior to the application of Daniel Holmes for a partition, a company of several persons was formed to purchase the whole or a greater part thereof, &c., is unsupported by proof, and the first knowledge or intimation of the formation of any company to purchase, known to your petitioner, was at the time and in the manner above stated.

The deed made by the commissioners to John I. Taylor of the

joint interest, was so made by request or assent of all the persons interested, for the convenience of sales and transfers of parts or lots, he then being an unmarried man, and before the decision of Den vs. Lambert was made; whether, with advice of legal counsel or not, your petitioner is not informed; and if without such counsel, your petitioner humbly trusts that it will be an evidence to your honorable bodies (as it appears to him) of the innocence of the parties concerned; for if they meditated fraud, they would have been very careful to clothe it with all the forms of the law.

The assertions that "the conduct of said commissioners has been notoriously questioned in the county of Monmouth," is gratuitous and unfounded in fact, and that the "records plainly showed at all times the grossest irregularities perpetrated in the face of the public decision of the Supreme Court, in the case of Den vs. Lambert, just previous[ly] made," is not sustained by the record, for the sale was made in 1829 and said decision was in 1832, near three years afterwards.

The map referred to was made to show to the purchasers the form and location of the several lots, and to show to the court the situation of the property, and the use made of it by the commissioners they considered as their right and privilege, but has, at the instance of the surrogate, been sent to his office. A copy was made by Leonard Walling, and forwarded as requested, but not taken nor paid for. How the counsel for the heirs has ascertained the value and amount of the wood sold by the twenty or more different owners, and during the several years of sale and consumption, your petitioner cannot conceive; but one fact he can state, that is, that the amount of his own sales have not been furnished; and your petitioner would further state, that the plan suggested, of an application to the court of chancery is one not customary in this State, and if it had been resorted to, would have consumed a considerable portion of the principal of their fortune for their support, which has been accomplished by the interest.

And your petitioner further showeth, that said application for partition, order for sale, sale, and report, were made honestly and in good faith; that the laying out in lots and sale were judiciously, ably, and honestly made; that the property was well sold, for good prices, and considerably higher than was generally expected; that only for the formation of the company that purchased, the whole amount of sales would, in his opinion, have been at least one thousand dollars less; and that neither he nor they, the members of this company, nor the other purchasers, have, in the aggregate or average, realized more than a fair remuneration for their capital and labor, although the times operated favorably; and should the act of justice and equity now claimed from your honorable bodies be refused, it may reduce some of the purchasers and present occupants from their present state of comparative comfort to poverty and wretchedness.

On said property there are now about seventy dwellings, two stores, one good public house, two docks or wharves, and ten or twelve mechanics' shops, beside other buildings, all of which, except two dwel-

dings and the farm buildings, have been erected since said sale by commissioners; and there are now near, or quite, one hundred owners in said property, the greater part of whom have purchased since said commissioners' sale, and a considerable portion are persons of small property, and their capital all invested therein. Your petitioner has sold out nearly all his interest in said property, and said company have sold all their joint interest.

It is further proved, that the property sold at its full value, by the fact stated by said heirs, that James P. Kearny, one of the heirs, sold his share, being one seventh or one eighth part, (your petitioner does not know which, for one of the heirs died either before or soon after said sale.) in April, 1829, for sixteen hundred dollars, making, for the whole, either eleven thousand two hundred or twelve thousand eight hundred dollars; and the sales by commissioners, in November of same year, amounted to nineteen thousand nine hundred and forty-one dollars and nineteen cents; and Daniel Holmes, who purchased said share, states that he was, and yet is, perfectly satisfied with the fairness of said sales, and the prices obtained for the said property.

But all this matter your petitioner submits only in answer to the statements of the heirs of said E. Kearny, deceased, respectfully suggesting that it is wholly aside the true issue. If there was the slightest fraud in the sale, by the commissioners, as is alleged, we are ready to answer it in a court of justice. We ask no relief from that. We are willing and desirous that that question remain exactly as it is; all we ask is this, we have purchased in good faith this property; we have paid for it nearly twenty thousand dollars, which money these heirs have had the benefit of; we have expended large sums in improvements on it, and yet in the face of justice and equity, they attempt to avail themselves of what is at best but a technical defect in our title, and thereby to recover back the property with all our improvements. It is relief from this technical defect only, and equity and justice, which we ask at your hands, and humbly trust, will not be refused.

And your petitioner doth further respectfully submit, that he is advised by counsel, and doth verily believe, that your honorable bodies have an undoubted right, upon the most strict and constitutional principles of a just government, to grant the relief prayed for. That it is a remedial statute only intended to confirm rights already existing, by curing defects, the result of accident or ignorance.

Chancellor Kent, in the 1st vol. of his commentaries, p. 456, approves of such statutes as are just, and go to confirm a sale of lands defectively made, &c. The Supreme Court of the United States has repeatedly held the same doctrine and extended it farther: it has decided, even that if the defective conveyance has been already adjudicated upon, and judgment given against it, still an act curing the defect is legal and right. 10 Peters' Reports, 294; 3 Dall. R., 386; 1 Cond. R., 172; 8 Peters' R., 88.

So, too, the past legislation of this state affords frequent instances of these remedial statutes. The predecessors of your honorable bodies

have repeatedly passed acts confirming wills defectively executed in the presence of two witnesses only. See pamphlet laws of 1826, p. 4; do., of 1838, p. 32; do. 1839, p. 42; do. 1840, pages 28, 30, and 80; and many other acts of like character in reference to wills; and also they have repeatedly cured defects in existing deeds.

The supreme court had decided that a misrecital of the execution in a sheriff's deed was fatal, and a general act was at once passed curing all such defective deeds; Harr. C., 368; and so, too, deeds made by executors and administrators, defective in certain points, were cured by a general act, 14th Nov., 1837. See, likewise, an act passed ——— curing a large number of deeds void in law, as against feme coverts, by reason of defective acknowledgments; and so acts have been repeatedly passed, giving relief and confirming defective deeds in specific cases. See pamphlet laws, 1836, p. 8; do. p. 72, and very many acts of a like character.

We also very respectfully ask of your honorable bodies, that the same course of just legislation be applied to such defective deeds as are alluded to in the bill now before you. We see no just reason why citizens of another State should, against equity and good conscience, be permitted to object to the passage of a general law in this State, proper in itself, and of a character similar to other acts heretofore passed for the protection of bona fide purchasers of property.

The facts herein contained in relation to the fairness of sale, the full value obtained, and exculpation of those concerned, against the charge of fraud and collusion, &c., can be fully established by statements now in the possession of your petitioner, and signed by persons of unimpeached veracity and respectability, (and some of them verified under oath;) however, the bill does not now, nor do we desire to, conclude the opposite party on the question of fraud, and have no objection to its being so modified as to expressly reserve that question.

Your petitioner, therefore, in behalf of himself and others, whose interests he represents, would pray your honorable bodies to pass said act, and he and they, as in duty bound, will ever pray.

ISAAC K. LIPPINCOTT.

TRENTON, *February* 16, 1841.

Exhibit B C.

Remarks on Mr. Lippincott's petition, in reply to the remonstrance of the heirs of E. Kearny.

This petition admits that a company was formed to purchase a large portion of Key Grove, and gives the names of the performers in this drama.

In the first act, in which the purchase is shown up, no mention is made of Leonard Walling and James Hopping, two of the commissioners, and Joseph Taylor, guardian of several of the minors; but immediately after the sale, says Mr. Lippincott, these persons did become partners in this joint interest, and shared the benefits of the purchase.

Mr. Lippincott says, however, that the first knowledge he had of the formation of such a company, was on the second day of the sale; but he does not assert that there was no such company formed before, nor any understanding had between these commissioners and the guardian. Their prompt association, on the contrary, is a circumstance in evidence which is quite conclusive. No such participation could have been so formed by accident, or upon a sudden thought, as Mr. Lippincott presents the matter in his petition. Why do not all the parties implicated by the remonstrance of the heirs present themselves before the committee, to be examined and cross examined on oath by the counsel of the heirs.

As to assertions contradicted by this petition, the subscriber states, on the word of the surrogate, that the original map of the commissioners had not been delivered at his office so recently as October last, ten years after the sale; that about that time a copy, as Leonard Walling represented, was brought or sent there by him, but the surrogate refused to take it. This map is quite essential to the clear understanding of the commissioners' conveyances and John I. Taylor's deeds. No copy of this map was ever sent to this subscriber; if Mr. Leonard Walling sent one, it never came to his hands.

The sales of wood from the estate did exceed the whole purchase money, and were realized before the first instalment fell due. Surely the few purchasers could have been produced to the committee, and testified there to the full amount of sales of wood. Why were they not produced there for examination on oath by the counsel of the heirs? Why?

The circumstance relied upon by Mr. Lippincott to prove the worth of the property on the necessitous sale by Dr. Kearny, of his share, amounts to no proof. He would have been obliged to sell it for less even than he did, if the purchaser, Mr. Holmes, had not been sure of a good speculation, even at the price of 2000, not 1600 dollars, which he gave for his share.

The cases of legislative interference and judicial approbation, cited by Mr. L., of them, are all different from this. If a single case like this could have been found, it would have been displayed most prominently in Mr. Lippincott's petition.

Mr. Lippincott and his counsel, before the committee, did not pretend that the bill in question was in fact a general bill for the public welfare; on the contrary, it was admitted throughout to be a private application in the guise of a public act, a course of proceeding most likely to misguide the legislature. Why did not Mr. L. and his associates petition the legislature openly and avowedly for relief? Why not? They would have been compelled to submit themselves to examination under oath before the remonstrants.

This petitioner, not content with making a bad case worse, casts, in conclusion, a reproach upon the legislature of the State of New Jersey. He tells them they must have one measure of justice for the citizens of New Jersey, and another for the citizens of other States, as if all the

citizens of the United States were not secured by the Constitution of this Union in coequal rights in every State; or as if this legislature would deny this privilege, and hold the Constitution of the Union, as this petitioner would have this legislature hold its own laws, as a thing to be made and unmade to suit the interests of a few. But the heirs are native citizens of New Jersey, and they put their claim in the United States court, so that a jury drawn from the whole State may pass between the parties. This ought not to disfranchise these heirs in the estimation of the legislature.

GEORGE SULLIVAN,
For the heirs of E. Kearny.

February, 1841.

Exhibit R.

STATE OF NEW JERSEY.

To the honorable the legislative council and general assembly of the State of New Jersey.

The petition of the children and heirs of the late Edmund Kearny, by their counsel, respectfully shows:

That a bill now before this honorable body, and not yet become a law, proposes a measure of flagrant violation of the just, legal, and equitable rights of your petitioners, and they humbly pray that they may be fully heard, by their counsel, before the said bill shall be finally passed upon by your honorable body, so that your honors may be truly informed of the merits of the controversy to which that bill relates.

The bill is to confirm the deeds of said Edmund Kearny's real estate, in Monmouth county, which were executed by Leonard Walling, James Hopping, and Edward Taylor, as commissioners of the orphan's court of said county.

And your petitioners show that they have been deprived of their inheritance in said estate by fraud, of which all the present tenants of said estate had legal notice before they purchased under the grantees of said commissioners; and in order to establish these facts in a due course of law, your petitioners instituted an action of ejectment, and a suit in equity, in the circuit court of the United States, in respect to a part of said estate. And at the trial of the said ejectment, it was proved by the defendant's own evidence that the sale of said estate was fraudulent, and the judges of said court charged the jury to this effect; and that the commissioners' deed to John I. Taylor, the deed then in question, was never valid.

The jury were equally divided, as it is said, on some point of law, so that no verdict was taken; but that cause now stands for trial at the next April term of said court, with the pedigree and seizin of the plaintiff admitted, so that the plaintiffs are all ready for trial, because for proof of the fraud and notice thereof by the defendant in that case, they may rely, as before, on the defendant's own evidence. The de-

fendant cannot begin to prove his title without proving the said fraud, and his knowledge of that fraud, from the records of the orphan's court, and the court of common pleas, and the registry of deeds in Monmouth county.

And your petitioners further show, that their bill in equity is filed against the representatives of two of the commissioners, viz., Leonard Walling and James Hopping, and others, charging the order of sale of said estate was fraudulently obtained from the orphan's court, with the concurrence of said two commissioners and the guardian of your petitioners, then all minors but one. Also, that the sale was not duly made, and was not conducted fairly and without fraud, and that said commissioners and guardian were purchasers of said property while acting as such commissioners and guardian, and that said commissioners concealed from the orphan's court this unlawful and fraudulent purchase from themselves, and their execution of a deed of said purchase to John I. Taylor in secret trust for them, said commissioners and guardian, and their associates in said purchase.

And, moreover, the bill in equity charges that all these facts, with many corroborating circumstances, are now apparent upon the records of the aforesaid county courts and registry of deeds, to the understanding of all persons conversant with the laws of New Jersey respecting the sale of the real estate of orphans.

And your petitioners show that the answers of the defendants, filed in said suit in equity, admit all these facts so sufficiently, that their counsel has noticed this suit for hearing at the next April court, upon the defendants' own statement of their own case.

And your petitioners further show that the tenants in possession, or the company under whom they hold, applied to this legislature for relief in the session of 1841, and obtained the law of March, 1841; providing, in effect, that commissioners' deed shall be valid in such cases if the sale be duly made, and the proceedings of such commissioners be fair, and free from fraud. But the said company having found, by the opinion of the court, that this act of March, 1841, gives not the aid needed in their case, it is now proposed by the bill before your honors, as your petitioners are informed, for as yet they have not been able to procure a copy thereof, that all investigation of the fraud aforesaid shall, in effect, be prevented.

And your petitioners humbly suggest and insist, that where the rights of parties stand upon the issue of fraud, no legislative interference can be consistent with public justice or the common rights of property. That the very application for such summary relief in cases pending before the judiciary, ought to excite the suspicion and mistrust, and jealousy of your honorable body, that all is not right, else there would be no dread of judicial investigation according to the course of laws and proceedings usual in New Jersey. That it will be time enough for further legislative aid, after the parties charged with the fraud shall have vindicated their course of conduct before the courts of law and equity, and that it is quite impracticable for your honorable body to

make the investigations of law, fact, and equity, which this controversy requires.

Your petitioners, therefore, pray that no bill may be passed by your honorable body affecting their rights in relation to their said inheritance, but that they may be left free to maintain their rights according to the laws of the State, as they existed at the time of their late father's decease, and as they now stand; and as in duty bound, your petitioners will ever pray.

THOMAS KEARNY,
CATHARINE KEARNY,
ANASTASIA K. THOMAS,
ANNE E. KEARNY,
HORATIO N. KEARNY,

By their attorney and counsel,

GEORGE SULLIVAN.

TRENTON, Feb. 12, 1844.

Exhibit R R.

STATE OF NEW JERSEY.

To the honorable the legislative council and general assembly of the State of New Jersey.

The petition and remonstrance of the children and heirs of the late Edmund Kearny, by their counsel, humbly shows:

That your petitioners are aggrieved by denial of their constitutional right to be heard in opposition to a certain private bill, entitled "An act to confirm the sales of the real estate whereof Edmund Kearny, deceased, late of the county of Monmouth, 'died seized;'" which was finally passed in assembly, on Wednesday, the 14th of the present month of February.

And your petitioners humbly show, that while this bill was on its passage in the general assembly, but had not come to its second reading, viz., on Tuesday morning, the 13th of the present month of February, your petitioners presented their petition and remonstrance against its passage, by the hands of the honorable speaker of assembly; that said petition, of which an exact copy is annexed and referred to as part of this remonstrance, was the first petition read in the morning, and printed copies thereof had been distributed to all the members of assembly before the assembly had been called to order; nevertheless, upon the second reading of the bill, some hours after on that day, a motion was made to refer it back with your petitioners' said petition to the committee of assembly, who reported it, in order that your petitioners might be heard thereon. The general assembly would not refer the said act and petition, though moved by the chairman of that committee, but refused to your petitioners all opportunity of being heard in respect to this most unjust and unconstitutional private bill, whose object was to deprive your petitioners of their right of property

in a large real estate, which the bill itself plainly admitted to be legally and equitably theirs by inheritance from their said late father. The assembly thereupon ordered said bill to a third reading, and your petitioners humbly show, that when the said bill came to its third reading, the honorable the general assembly persisted in refusing to your petitioners all opportunity of being heard thereon, and passed the same finally in concurrence with the council.

And your petitioners submit, that the honorable assembly denied to your petitioners and remonstrants their constitutional right to be heard in opposition to this private bill, without any legal, equitable, or justifiable cause whatever. And your petitioners humbly submit, that such denial of common right, when your honorable body had assumed the paramount decision of two causes then actually pending in the United States circuit court, held for New Jersey, is a grievance and an oppression, of which your petitioners and remonstrants have a right to complain. Who among the honorable members of your honorable body would deem it right, or just, or equitable, to be deprived of his property without being heard?

The honorable council, sitting as a court of appeals, would disaffirm any decree of a court of chancery which had passed upon the rights of persons not made parties to the suit, because such had not been heard. And the high court of chancery in England would treat even an act of parliament, if a private act like this, as a mere nullity and utterly void, if the party whose rights of property were affected thereby, had been refused a hearing as your petitioners have been refused, in opposition to its passage.

Surely your honorable body will perceive that this denial of your petitioners' right to be heard on the passage of this private bill, is a grievance and an act of oppression without example in New Jersey since the reign here of George the Third. And your honors will also perceive, that the very enormity of this violation of constitutional common right is proof conclusive that your honorable members of assembly had been misled and deceived, and their confidence most grossly abused.

For further illustration to your honors, of this abuse of confidence and flagrant imposition upon your honorable body, your petitioners will indicate the wilful and false representations made by the applicants for this act, apparent upon its face, and which your honorable body, by your enactment, have been made to assume as your own averments.

The preamble of the act contains six specifications of cause for passing the bill, each commencing with the word whereas, and of these not one of them is true in the sense in which it was designed to be received by your honors, and averred by your honorable body to be true.

The first specification, extending to the 64th line of the printed bill sets forth the sale, under the order of the orphan's court, from lot No. 1 to lot No. 15. But the recitals in the act of the sales of lots from No. 5 to 10 inclusive, are false. These lots are represented as sold,

Nos. 5, 6, 10, to Ezra Osborn, Nos. 7, 9, to Isaac K. Lippincott, and No. 8 to Richard C. Burrowes. And at line 60 of the printed bill it is recited these persons were duly reported by said commissioners to said orphan's court as the purchasers of said property. Now duly reported means reported upon oath, and yet the said commissioners, in their deed of said six lots to John I. Taylor, shortly afterwards, expressly say, that said Osborn, Lippincott, and Burrowes were not the purchasers, but that John I. Taylor was the purchaser of said lots, and that said Osborn, Lippincott, and Burrowes bid for him, and therefore they executed their deed to him as the real and original purchaser on his own account.

But your honors will be astonished to learn that the said Lippincott afterwards, in his answer to the bill in equity of your petitioners, in the United States court, did, upon his oath, aver that neither of these statements was true, and upon his oath declared, that he, and said Osborn, and Burrowes, did not buy said lots as purchasers for themselves, nor did said John I. Taylor buy them at all, but that they, said Osborn, Burrowes, and Lippincott, bought them for a company, and they were conveyed by said commissioners to said John I. Taylor, in trust for that company, of which two of the said commissioners, and the guardian and said Taylor, and said Burrowes, and himself, said Lippincott, were members. But this trust was not expressed in the said deed, but was concealed and secret, and a fraudulent trust, for the use of said two commissioners and guardian, and their confederates.

Now your petitioners humbly ask of your honors whether it is right, fitting, or proper, that the consummation of this actual fraud should be accomplished through the protecting interposition of your honorable body, thus unhandsomely deceived and drawn in, to be made instrumental to its further concealment from the searching eye of all-seeing justice.

The second specification in the preamble of this act sets forth that said Osborn, Burrowes, and Lippincott had parted with their interest in said six lots after the said sale, and in consequence thereof, and not otherwise, the deeds of those lots *was* made by said commissioners to John I. Taylor; whereas, in truth and in fact, the said Lippincott and Osborn had not parted with their interest in said lots, but the deed of said six lots was executed to John I. Taylor in secret trust for said commissioners, guardian, and others, contrary to the established law of the land against fraud, then in full force for the protection of minors, and still even in full force for the protection of all but your petitioners; your petitioners being deprived of this common right, and in effect outlawed by the private act thus falsely and fraudulently obtained at the hands of your honorable body.

The third specification of the preamble avers that the deeds made to others than purchasers were executed under the full impression and belief on the part of the commissioners and purchasers that such substitution was frequently made, and that the same was a virtual and proper compliance with the order of said orphan's court, and was legal

and valid in itself. Now your petitioners humbly submit, that however the commissioners may have thought it right to swear falsely to their report of sales, and then to state in their deeds, upon their oaths, the very contrary of their report, and thereupon to make a deed of said six lots to Taylor, seemingly in his own right, but in fact upon a secret and fraudulent trust for themselves, and the guardian and their associates, however said commissioners might think this all right, it cannot be that your honors would think all this right and proper, and lend the authority of your confirmation to give effect and success to such corruption.

The fourth specification of the preamble of the act is a specimen of the artful design, which plainly shows of itself the true character of the motives with which the whole transaction of the sale and its concealment were so fraudulently conducted. Your honors are made to believe, not that the commissioners were in fact interested in the sale at the purchase, but that it had been so represented; but, if it were so, that this was a mere informality, this fraudulent purchase being mentioned in connexion with other informalities and irregularities in said sale. And your honors are made to believe that upon mere vague report doubts had arisen respecting the title to said lots, and thereupon your honors are made to enact that, even although the commissioners were interested in the purchase at the sale, (a fact which, of itself, being a purchase from themselves selling as commissioners, is "absolute, direct, and actual fraud," by the law of this State as it has stood from its foundation to this hour,) yet your honors are induced to enact that this fraudulent sale shall be deemed lawful and valid.

Nay, upon such false representations as these your honors have been induced to enact the most flagrant outrage upon the common rights of all citizens, that of establishing a new law for one citizen by name, while the old law of the State remains unaltered and the same for your honors, and all other citizens in precisely the same case.

Nothing can more clearly prove the abuse of your confidence by artful and designing men, than that your honorable body should have been made instruments to an act which Washington, Jefferson, and Adams denounced as tyrannical at the peril of their lives, and which the blood of Jerseymen resisted, here in the very city where your honors assemble, to preserve equal rights and equal laws, as the corner stones of the constitutional temple of true civil liberty.

In the fifth specification of the preamble of this act your honors are made to aver that the sale and conveyances were made in good faith, and for a fair, and just, and full consideration. This is utterly false. Your honors had no evidence before you to show the amount of the proceeds of the sales of wood cut from that estate under the eyes of the commissioners and guardian, after the sale and before the delivery of the deeds; but the truth is, that the amount of clear receipts from the wood cut exceeded the whole sum of the purchase money; so that the purchasers cut off the wood, and out of the proceeds provided enough to pay the purchase money, before even they had acquired a right to

the property, and thus the deeds of the commissioners were in effect a mere gift to most of their grantees. All this is charged in your petitioners' bill in equity, now pending in the court of the United States; and said John I. Taylor is interrogated especially to say whether he did not receive the proceeds of sales of wood, as trustee and treasurer of the company of purchasers, said commissioners and guardian members thereof; and the said Taylor does not answer, and thereby, and by the rules of the court, admits the charge of the bill is true. And it is to avoid the bearing of the general law of the land against fraud, that these conspirators and their assigns have brought their case to your honors, away from the courts of justice, well knowing that your honors would not investigate this complex case of fraud, and that, by management and deception here, they might be enabled to trample the law of the land under their feet in the halls of justice.

The conspirators and their assigns do not come here to save expense or to quiet their title. They knew and understood quite well that the act they would have your honors pass in their behalf would not arrest the progress of the suits pending. On the contrary, it will only add fuel to the flame, and bring another element of controversy into the causes pending, and carry to the Supreme Court of the United States, at Washington, to try, unavoidably, the validity of a private act, which is founded upon false representations, and suspends the general law to the ruthless exposure of one family of citizens, while it establishes it the stronger for the protection of all others in the State. An act, obtained by false representations to your honorable body, which those outraged citizens were not allowed opportunity to uncover to your honors' view, although they prayed for leave to do it, and there was time, abundant time, for them to be heard without inconvenience to your honorable body.

Surely none of your honors can believe that such a law will be sustained in the Supreme Court of the United States, nor can the members of council, upon these views of this act, hesitate to say that they, as a court of appeals, would declare it void if any court in Jersey could be found to sustain it.

Your remonstrants have hope, however, that your honorable body will repeal this private act as void, because your honors have been deceived, and made to aver, before the people of the State, what is untrue and fraudulently false, and, more than all, to enact what is unconstitutional, oppressive, and tyrannical. Confidence thus abused, if silent after this be known, might seem to make itself a party to the fraud which it is used as an instrument to conceal.

Again, in the last specification of the preamble of this act, your honors are made to say that the property in question is now in the hands of many innocent owners and occupants, holding under the deeds of said commissioners. Now this also is untrue. There is no tenant who had not all the notice that the law requires, of all the fraud perpetrated in the sale and conveyance of said real estate.

No person is an innocent purchaser who reads from the record the

story of a fraud in the title he buys; and your petitioners aver, upon the authority of Judge Baldwin and Judge Dickinson, that no man at all conversant with the law of New Jersey, in respect to the sale of orphans' real estate, could read the records of sale and conveyance of this property, and not perceive there was fraud in the transaction. None, therefore, who read and bought could be innocent purchasers.

But your honors have been told that, in point of fact, these tenants had not read nor heard of the records of the orphan's court or the registry of deeds. But what says the law of the land? The buyer must look to his title. Your honors hold this to be law, and have established and sustain records of court and registries of deeds for the very reason that this is the law, and because the public welfare and the rights of property require these evidences of title to fix the rights of property beyond all question in respect to lawful ownership.

Abolish the records of court, repeal all registry laws, and let all citizens stand upon the uncertainties of unrecorded rights, if this be right, wise, and proper; but do not, your petitioners humbly entreat, do not *not* repeal and annul them in respect to your petitioners, while you uphold, sustain, and enforce them for your own protection and the protection of all other citizens. This private act against your petitioners is, in effect, such a repeal and nullification for your petitioners alone, while all others are left in the undiminished enjoyment of full protection of all the laws against fraud.

But the concluding clause of the act finishes with consummate skill this wicked work of fraudulent deception of your honorable body. This purports to enact that the deeds of the commissioners may be impeached for actual fraud of the commissioners.

Perhaps all your honors did not know that, in the construction of statutes by courts of law, the rule is to take the whole statute together, and whatever is clear and plainly intelligible by itself, that shall stand unaltered, and the obscure and uncertain shall be understood and modified as far as may be, consistently and subordinately to what is clear and plain.

Now, there are express, clear, and plain enactments, viz., that the commissioners' deeds shall be valid and effectual in law to convey the estate; and that said deeds, and all subsequent conveyances under them, shall not be impeached in any way for any such alleged interest of the commissioners, or any of them, in the property so sold by them, or for any alleged defect or informality in the execution of the powers of said commissioners, or in the proceedings of the said orphan's court. All this is clear, and is established, but the act superadds that the said deeds shall not be impeached or invalidated upon any other ground than that of absolute, direct, and actual fraud. But your petitioners show, that the only fraud which the commissioners could commit in the purchase by themselves of themselves, selling as commissioners, is covered and protected by the plain and clear provisions of this act. What other frauds could the commissioners perpetrate, but confederately with others, to report falsely that the estate could not be divided,

so that it might be sold to a company of speculators, and they participate in the profits; and in order to carry out this plan, to report the sales falsely; and thereupon to convey the company's purchase in secret trust for their own use, with their associates? But all this, however true, your petitioners are excluded by this act from proving, because the sale and purchase by the commissioners of themselves is expressly legalized, and all the records of the court are a sealed book. This concluding clause, therefore, is not merely nugatory as against the commissioners' deeds, but was designedly contrived, as your petitioners infer, from its legal effect, which is no effect at all, to deceive and mislead your honors.

Your petitioners appeal to your honors, individually, and ask, whether you did not consider the right of proving actual fraud against commissioners was left to your petitioners? And yet, your honors must perceive, that if the heirs cannot impeach the deeds on the ground that the commissioners became interested in the purchase at the sale, nor show fraud in any of the proceedings in the orphan's court, from their defects and irregularities, why then the heirs are absolutely excluded from showing any fraud at all, however clearly they might, from such sources of evidence, demonstrate the actual collision of their guardian with the commissioners who purchased, and others, to defraud your petitioners out of their inheritance. However just and clear their title to recover its possession, upon all the evidence that might be procured, as the law stood before this act, every man of common sense must see that a law excluding all evidence of title is a denial of right and a privation of justice. And because in every court, and in every way that this right can be tried, the law was against those designing men, they have applied to your honors to change and modify the law of the land once more, to suit their case. Their first act of relief was not cut and shaped to fit their case so as to cover all its frauds, and they come now to your honorable body for a cloak, long and large enough to cover all its deformities, and your honors have been induced, by their deceptive acts and misrepresentations, to fulfil all their purposes.

The boldness of the application, in the very face of the court's opinion against them, demonstrates with power the reckless spirit of speculation upon others' property, with which this fraudulent combination has carried out its purpose.

Your petitioners have only one other cause of anxiety to dispose of: it is, that they should not be deemed to have failed in all due respect to your honorable body, by the republican freedom with which they have expressed their sense of the grievous wrongs they have sustained at the hands of your honorable body, and your petitioners doubt not that your honors individually would fearlessly use the same plain language, as our fathers did before thrones, and kings, and legislatures, if, like your petitioners, your honors were precluded from your equal rights of property, and outlawed in the courts of justice.

Your petitioners deem it also respectful to your honorable body to show that all due diligence was used on their part to meet the efforts of

their adversaries here. These adversaries never gave notice of their application to your honorable body, at this session, nor had your petitioners' principal counsel any notice of any action in the legislature, till Saturday, the 3d instant, whereupon the counsel, who resides in New York, requested one of his associate counsel, residing in Princeton, to look after the interests of the heirs. But on being informed that such counsel would not be able to give that attention, the counsel in New York, as early as Tuesday, the 6th instant, retained able counsel of the city of Newark, who was going to Trenton on Wednesday, the 7th, to give the matter his attention, to procure and send a copy of the bill, then with the committee of the judiciary in council, so that the counsel in New York might prepare, print, and present a petition in behalf of your petitioners without delay. But the counsel in New York had no information by letter of his associate counsel of Newark, from Trenton, till Saturday, the 10th instant, stating that the bill, to his surprise, had been reported in council, and passed without opposition, and was then, on Saturday evening, in the hands of the committee of the judiciary in assembly, and upon an understanding between him and a member of the committee, that the bill should not be reported till Monday, when it would be necessary for the counsel in New York to come down to Trenton.

This letter was received on the 11th instant, and upon the next day, Monday, the petitioners' counsel in New York wrote, printed, and brought the annexed petition to Trenton, and presented it early on Tuesday morning, having learned at Trenton, on Monday night, that the bill had been reported on Saturday, contrary to the understanding between the associate counsel and a member of the committee who had the bill in hand. That arrangement was made on Friday evening, and the bill was reported on Saturday morning. Fortunately there was no quorum on Monday, and the petition of your petitioners was presented in season for a hearing, without the least inconvenience to the assembly, if that honorable body had understood and considered the subject, and deemed it right and proper to grant your petitioners the hearing prayed for.

And your petitioners, humbly entreating your honorable body to take the grievances and oppression herein complained of into your honors' favorable consideration, at the earliest possible day, respectfully pray, moreover, that your petitioners may be restored to their just and equal rights, in common with your honors and other citizens, by the prompt repeal of this wrongful private act, so fraudulently, falsely, and deceptively obtained.

And your petitioners humbly insist, that it is within the power of your honorable body to expunge from your record whatever is false and wrong as soon as placed there, and equally so to repeal at once a private act, obtained so manifestly by deception and abuse of your honors' personal confidence; and your petitioners respectfully submit that it is a sacred duty, imposed by your oaths of office, for the security of your fellow citizens, to do it, and thereby, moreover, to mark your

honors' high sense of the indignity offered to your honorable body by the parties procuring said private act, in the use they have made of your honors to cover the frauds of their title by betraying your honors' confidence into false averments and most unconstitutional legislation. This your petitioners humbly ask as due to them also, and that they may be heard by their counsel on this petition, because it is obviously impracticable to state in a petition all the grounds, in detail, of your petitioners' most just cause of remonstrance against the private act aforesaid. And as in duty bound will ever pray.

THOMAS KEARNY,
CATHARINE KEARNY,
ANASTASIA K. THOMAS,
ANNE E. KEARNY,
HORATIO N. KEARNY.

By their attorney and counsel,

GEORGE SULLIVAN.

Trenton, February 22, 1844.

Exhibit Q.

The committee to whom was referred the petition of the heirs of Edmund Kearny, deceased, praying a repeal of the act entitled "An act to confirm the sales of the real estate whereof Edmund Kearny, deceased, late of the county of Monmouth, died seized," passed February, 14, 1844, beg leave to report against the prayer of the petitioners, and ask to be discharged from further consideration of the subject.

S. D. CANFIELD,
GEO. H. BROWN,
WM. WILSON,
Committee.

Dated March 9, 1844.

Evidence.

United States circuit court, district of New Jersey.

Mr. Spencer's notes at first trial of ejectment case.

JOHN DEN, ex dem. Thomas Kearny et al., vs. OLIVER VANDERBILT. } In ejectment.

Messrs. Green, Sullivan, and Wall, for plaintiff.
" Vredenburgh, Dayton, and Williamson, for defendant.

Green opens for plaintiff. Offers will of James Kearny, January 15th, 1811. Probate, January 23d, 1811.

Mary Kearny, sworn. I am sister of James Kearny, who resided on Key Grove farm, and I with him. It is on one side of creek, in Monmouth county. He lived there all his life. He died on January 17th, 1811, aged sixty-one years. My grandfather and father lived there be-

fore him. I was born on property. Key Grove was his home, and he was buried there. Died at Richmond, New York. Edmund came there the April after James died. Edmund lived there from 1811 to 1822; in December he died. The farm was above nine hundred acres. Jaques' tavern on Key Grove property. Edmund's children were: James, born in December, 1801; Horatio, in October, 1803; John, born November, 1805; Mary, November, 1808; Thomas, September, 1810; Anastasia, October, 1813; Catharine, June, 1816; Anne, June, 1818.

James died in 1828 or 1829, I don't recollect; died without children. Horatio lives in Ohio. John was lost at sea in 1825 or 1826; was never married; died at nineteen. Mary died at St. Croix in 1836; never married. Thomas is living in Mississippi. Anastasia is in ——; is married to George C. Thomas. Catharine is in Mississippi with her brother. Miss Anne Kearny is in court; New York is her home.

Defendant confesses lease, entry, ouster, and possession, by P. Vredenburgh, jr., his attorney.

Catharine moved from this State to New York, two years ago, I think, this October. Anne moved at same time. Anastasia moved at same time. They have visited here, but have not resided here since.

Thomas went to Mississippi more than ten years ago; has resided there since. Horatio went to Ohio in 1836; never has resided here since. They went October 1st, that is, the girls Anne C. and Anastasia.

Plaintiff rests.

Vredenburgh opens for defendant.

Defendant claims title to this property through Edmund Kearny.

Offers deed May 5th, 1828, from James P. Kearney to Daniel and John W. Holmes, acknowledged and recorded same day before Joseph F. Randolph. Consideration $1,600. Deed conveys one-seventh. Deed describes property as consisting of about twelve hundred acres.

Offers proceedings in orphan's court for decision on application of Daniel and John W. Holmes; read, subject to all legal exceptions. April term, 1829. Signed by Daniel Holmes.

James Hopping, Edward Taylor, Leonard Walling, appointed commissioners.

Commissioners sworn, April, 1829, before Joseph Taylor.

Report of commissioners read, dated July 10th, 1829.

Order of Patterson endorsed, July term, 1829.

Decree of sale, same term.

Report of sales by commissioners. $19,941 19 amount of sales, January, 1830. Decree referring to report confirming sales, and ordering conveyances to be made to purchasers. Offers commissioners' deed to John I. Taylor, April 1st, 1830. Acknowledged before , April 8th, 1830, and recorded 15th. Said deed conveys lots 5, 6, 7, 8, 9, and 10.

Deed from John I. Taylor and others to Oliver Vanderbilt, 25th of February, 1839.

John Hopping and Mary, his wife; Patience Hopping, James Frost and Sarah, his wife; Mary Ann Hopping, Edward T. Hopping, John I. Taylor and Mary, his wife; Ezra Osborn and Hannah, his wife; James G. Crawford and Elizabeth, his wife; Leonard Walling and Deborah, his wife; David S. Bray and Eliza, his wife; and Isaac K. Lippincott and Caroline, his wife, to Oliver Vanderbilt, of Richmond county, New York; $7,000 the consideration, containing 9 3-100 of an acre, that is property in dispute, lot second.

Richard C. Burrowes, offers to prove that the deed was made to Taylor by his consent. Examined, subject to objection. Sworn.

I know this tavern house of Vanderbilt's, at Key Port; it is on the lot struck off to me by commissioners. The deed from commissioners to John I. Taylor was made with my assent. It is lot No. 8, the fishing point lot.

I bid for the lot at request of Daniel Holmes. There was a company of Daniel Holmes, Primrose Hopping, Isaac K. Lippincott, Ezra Osborn; that was all the company I knew of at the time; I was one of company. It was to purchase that lot. I was selected to bid. Some of the company requested me to make deed to John I. Taylor. I sold my share to Ezra Osborn; I got $40 dollars advance; I got it for the day's work; I mean by day's work, my interest; I sold out to Squire Osborne that night before I left. This company was on the same day extended to lots 5, 6, 7, 8, 9, and 10; there was wood on these lots; I do not know how much. I did not hear that John I. Taylor was to make a deed to the others. My consent was verbal. My consent was given to Ezra Osborn; I do not recollect giving my consent to Taylor; I gave the consent to James Hopping; I can't tell how long after consent to Osborn I gave it to Hopping. I was to have an equal right in the lots bought by Osborn and Lippincott. I transferred my right, for $40, verbally. The company was formed in the fore part of the second day of sale. I do not know that the fact of the association was communicated to commissioners. I did not know at that time that Walling and Hopping were to have share. James Hopping, shortly after I sold out, called on me and asked if I had any objection that the deed should be made to Taylor. I said no. The price to be given was discretionary. I was chosen to bid for fishing point lot. Osborn and Lippincott were told to bid for the lots struck off to them. No price was fixed. I consider I gave no other consent to Osborn than by the transfer of the property to him. At the time I gave consent to Hopping, I had no interest in the property, and of course didn't care to whom title was made. John I. Taylor was not a member of company. His name was not mentioned, as I know of, the day I sold to Osborn. John I. Taylor was there second day.

In chief. I think John I. Taylor was then a single man. Joseph Taylor was not a member of company. Defendant rests.

Andrew Bowne, sworn. Proves signature of Horatio Kearny to three receipts for purchase money, dated April 1, 1830, $509; No. 2, April 12th, 1830, $749 23; No. 3, April 1st, 1831, $1,400 20. Proves

signature of Mary E. Kearny to receipt, April 12, 1830, $1,258 23. Proves signature of George C. Thomas and Anastasia, September 7, 1837, $129 23, to receipt to John I. Taylor, administrator of Joseph Taylor, guardian.

Two receipts of Catharine Kearny. No. 1, November 27, 1837—$1,756, to administrator of guardian. No. 2, March 22d, 1838—$993 75, to administrator of guardian.

Receipt of Thomas Kearny, 27th September, 1831, to Joseph Taylor, $2,965 15.

Receipt of Caleb O. Halsted, August 30, 1838—$300, as guardian of Anne Kearny, to administrator of Joseph Taylor.

Receipt of Caleb O. Halsted, January 19, 1839—$2,649 97, as guardian aforesaid.

That money has since been paid to Anne Kearny—the money mentioned in the receipts—since she came of age.

Edward Taylor, sworn.—Proves two advertisements in New York, October 27, 1829.

Wall objects as irrelevant. Overruled.

John W. Bartleson, sworn.—I was one of the editors of Monmouth Enquirer, in 1829. Paper produced in file, and the advertisement read; it refers to 360 acres of wood land, dated September 1st, 1829.

Proves editor's receipt, 15th September, 1829, to commissioners, for printing 100 handbills. I struck off 100 handbills for him.

Daniel Holmes, sworn.—Proves signature of Daniel Holmes to—

One receipt—April 1, 1830—$1,100 00.

No. 2. June 8, 1830— 158 23.

April 1, 1831— 1,421 00. Receipt of John W. Holmes for self and D. Holmes.

No. 1.	Receipt—	April 1, 1830—$ 500 00.	Jos. Taylor as guardian, to commissioners.
2.	do.	" 12, 1830—1,802 55.	do.
3.	do.	" 1, 1831— 400 00.	do.
4.	do.	" 9, 1831—2,561 54.	do.
5.	do.	" 9, 1831— 878 10.	do.
6.	do.	" 1, 1832— 775 34.	do.
7.	do.	" 12, 1832—	do.
8.	do.	Jan. 19, 1832— 172 00.	do.
9.	do.	May 3, 1831— 585 40.	do.
10.	do.	May 7, 1832—2,000 00.	do.
11.	do.	April 1, 1833— 72 00.	do.
13.	do.	" 15, 1833— 180 00.	do.
14.	do.	" 16, 1833— 280 37.	do.
15.	do.	May 28, 1833— 12 30.	do.
16.	do.	April 7, 1834—3,165 00.	do.

Daniel Holmes.—I, and John W. Holmes, bought of James Kearny. The land sold by commissioners is same land. There turned out less land than we expected. I gave James Kearny $1,600. I retained $400 to pay mortgage to Forman on the land. I did not give as much as I thought it worth. [Map shown witness.] That appears like a map of property. Farm house and barn the only buildings on tract. Soil of fishing point lot, when struck off to Burrowes, was poor, and very little wood on it. [Another map shown.] Wood land was irregular; wood, light and in spots, good. I offered $15,000, and that was thought a fair price by the neighborhood. I was there on the first day of sale. The fishing point lot was set up on the first day. Twenty-nine or thirty dollars an acre was bid for it the first day. That was the highest bid; and I begged the commissioners to adjourn that lot until the next day. That lot was of more importance to the interests of our part of the country than any other. In evening of the first day, I asked Mr. Burrowes to come the second day. I did so because I understood the company from Middletown Point was going to buy the lot and let it lie idle ; and I wanted to get up a company to compete, and prevent this.

To make the lot valuable, an outlay of capital was required; so much so, that I sold out. My object in requesting Burrowes to come back, was to produce competition. I was there second day of sale. On that day I went to work and got up a company. Burrowes and Lippincott agreed to it. I do not recollect whether I spoke to Lippincott the night before or not; also to Septimus Stephens; I think Mr. Osborn also. We got the company made up, and agreed that Burrowes should bid for fishing point lot. Horatio Kearny was one of the company. My object was to create competition. I did not wish to hold the property myself, and did not longer than I couldn't help. I do not think the company at first extended further than the purchase of fishing point lot. I think I induced the extension; all seemed afraid of it. It was poor. Septimus Stephens did not wish to have any thing to do with the lots after the extension. As the lots were severally put up, I used my influence to induce company to bid for them; some of them objected. In Captain Kearny's time, he had fine oysters in creek; not so good since. They grow as well, but are stolen. The fishing point landing was what gave all their value to the other lots. The conduct of the commissioners was fair. I never knew a fairer sale; was satisfied for my part; so was my partner, and such was the opinion of the neighborhood. I do not think the property, in the same situation, would bring as much now as then. You could not find many buyers who would pay for it. Horatio Kearny was at sale. The sale was well attended; better than usual in our section of country. I sold my share in this purchase to Joseph Taylor, the guardian. He gave me forty dollars advance for my interest in the lots. I think I sold to him at the time we were laying out roads. It was before the first of April. Before the commissioners made the deed to the company, I had been to an expense of about fifteen dollars on it. Mr.

Taylor and I agreed that the advertisement should be put in the two New York papers, and he agreed to do it. This was the guardian.

Cross examined.

I was let into the possession of property immediately after sale, and before confirmation. I sold out before the confirmation of sale. Joseph Taylor was to step in my shoes. The company was Lippincott, myself, Stephens, Burrowes, and I think Ezra Osborn and Horatio Kearny. John I. Taylor was not one of the company. I thought the best way to produce competition was to unite these men in a company—we were not to bid against each other. Burrowes was to bid for us for the fishing point lot. Mr. Burrowes bid out loud, and some one else against him by signs. There was difficulty. John P. Van Pelt claimed the bid. Primrose Hopping was the crier. He afterwards became one of the company. I do not recollect seeing John I. Taylor at sale. I understood Horatio Kearny sold to David S. Bray. I think Stevens backed out when we bought another lot, on account of the expense. I think the application for the road was made to the January court. I think Leonard Walling was the surveyor of the road. I do not know whether he or Alfred Walling surveyed—both are surveyors, but I think it likely Leonard was the man. Lippincott and Osborn were the acting men on first of April. My consent was not asked. It was known that whoever took the deed my interest passed to Joseph Taylor. I understood the deeds were made to John I. Taylor, because he was a single man, and could make deeds easily for the company. My transfer to Joseph Taylor was verbal. John I. Taylor is the son of Jos. Taylor. Primrose Hopping and James Hopping were brothers. Ezra Osborn was son-in-law of Joseph Taylor.

In chief.

I think I sold to Joseph Taylor in February when road was laid out. I do not think the sale was before the confirmation. At the time of sale I do not know that either of commissioners was member of company. I solicited James Hopping, and he said he had no right to come in the company, for he was a commissioner. I would not have taken hold of this lot individually, as the cost would be too much. Vessels would run up, but it was an injury to them without a dock.

After deed to John I. Taylor, the company ran off into lots all, except the tavern house and lot. The formation of the company brought up the price from $29 or $30 to $43.

Cross examined.

I employed Richard S. Hartshorne to see to order to divide, and I I think he named the commissioners to the court. John I. Taylor was the cousin of Edward Taylor, the commissioner. This Edward Taylor was cousin of Joseph Taylor.

Edward Taylor, sworn. I was one of the commissioners. James Hopping and Leonard Walling are dead. Property was put up, cried fairly, and sold to the highest bidder. At the time property was sold, none of the commissioners had an interest. I never had and never wanted to have any. I thought the property sold well; for more than I would have given for it at any rate. We made the deed to John I. Taylor, because we were requested by those who purchased the lots. I was present when the lot was struck off to Richard C. Burrowes. The crier gave notice two or three times before it was struck off. I thought he was rather tedious in striking off. Mr. Burrowes bid audibly. The property would not fetch now, in the same situation, within $2,000 as much as then, and then it fetched $1,500 more than I expected. It brought so much more because it was lotted, and the people wanted to buy small lots. The advertisement in Monmouth Inquirer was not drawn up be me; I think by Walling.

Cross examined.

I did not know there was a company formed. I heard the talk of making up one, but I did not know who the commissioners were until lately. I won't be positive that Richard C. Burrowes agreed to me that the title should be made to John I. Taylor. I think I saw Burrowes, Osborn, and Lippincott together at the tavern on the point after sale. Burrowes never paid any money. I only think I had Burrowes's assent to give the deed to John I. Taylor, because I do not think I would give deed to him without such assent. After lot was struck off, Van Pelt claimed the bid immediately. I told Burrowes he might put up lot, but Burrowes refused. It was fairly knockd down to him.

Court adjourned.

I was born in 1764; will be in April next . James Hopping was a young man to what I was. So was Walling. I am as old as Walling's futher. Hopping, Walling, and myself were intimate friends. Hopping lived 3½ miles, Walling 4 miles from me.

Copy of map produced and exhibited to witness.

Certificate of appointment as guardian proved and read.

I can't tell what proof was made to satisfy the court that the lands could not be divided. I don't know whether Joseph Taylor

The purchasers had no authority from me to go on land and cut down the wood. I have no knowledge that John I. Taylor paid the money for the land. We received it. We received the money once at the tavern at Middletown Point, once at Brown's Point. I did not see the money paid to Walling. I do not know who furnished the money for land in deed to John I. Taylor. I did not know that the purchasers went on soon after the sale. They had no authority from me. John I. Taylor did not keep the accounts of commissioners. I know Thomas Carhart. I know Amos Walling, and suppose he is a cousin of Leonard Walling's. Richard C. Burrowes was a son-in-law

of Joseph Taylor. Thomas Carthart was in all probability able to pay one-half without entry to cut wood. Tilton was not able. After sale Joseph Taylor purchased a lot on the south side of farm. I am confident that James Hopping had no interest in the lands until after sale. I am confident Leonard Walling had no interest. I think they had no interest, because I do not think they would do what they ought not. We made the deed to John I. Taylor at the request of 8 or 9. I mean 8 or 9 lots.

I live one and a half mile from Burrowes. He never made any objections to the deed having been made to John I. Taylor. I was standing within ten feet of Burrowes when his bid was made. Joseph Taylor and Septimus Stephens are dead. I do not know that any of the commissioners gave authority to the purchasers to enter. Lippincott lived at Monmouth court-house, fifteen or sixteen miles from Key Grove.

William W. Forman, sworn. I lived on Kearny property from 1823 to 1829. I rented it by the year. I contracted for it at vendue. I was the highest bidder at $260 per annum. I had it three or four years at that price. The rest of the time I paid $300. This price was fixed also at auction. For six years I did not sell $400 off it. The soil was poor, and out of order. There was young wood. I was not allowed to cut the young wood. I never heard a higher price than $15,000 named for the farm. The place was unhealthy. The fishing point lot was as poor as could be. The wood was around the point.

Cross examined.

I had made up my mind not to purchase before the sale, and do not know whether I read the advertisement or not. The advertisement is all true. In order to get to Middletown Point, you have to ascend a creek for two miles; and the creek is filling up. This will take away the trade from Middletown Point. Lockport is the best point on the shore. I was at the sale, but heard nothing of any company. I was there both days. I never was there until there were a dozen houses. I have been informed that the two first houses were put up by Leonard Walling and Lippincott. When I was on the place, and long before application for partition, I heard Walling say that it was a good place for a town.

I wanted the lot Horatio Kearny bought, but I would not bid against him. Some lots were cut off three years ago, and I think it cut better than when first cut thirty years ago. Wood grows up in about thirty years. I never doubted the fairness of the sale.

Hendrick Van Dyne, sworn. I was present both days of sale. Went to purchase. I bid for lot No. 4; at any rate, for the lot Tilton bought. I did not buy it because it fetched more than I thought it worth. I

was informed a man was bidding who was worth nothing, and he would run it up on me.

I bid for lot No. 5 also. I did not buy it, because it fetched more than it was worth. Ezra Osborn and myself were the last bidders. From appearances I should have got it for three or four dollars less than Osborn gave for it. During the sale, Horatio Kearny said a number of times he thought persons were giving more than the property was worth. He bid for a lot and stopped, and he said the purchaser had been made to give more than its worth, and he might have it and be damned. He said, also, that if the property fetched $20,000, it would be beyond his expectation. I never heard a man doubt the fairness of the sale.

John Sproul, sworn. I was present both days of sale to purchase. I bid for lot No. 7. I did not buy it, because I thought it brought more than its worth. Several bid against me. The last was Osborn or Lippincott.

James Sproul purchased, and I and my brother came in afterwards. I think we cut 7 cords to the acre. Our calculation was, that throwing in our labor, the proceeds of the wood paid for lot. Three years after I gave $600 for the shares of my brothers; this was about $10 per acre for land, and $300 worth of rail timber. We got for some $12 per cord in the winter season. A New York load is one-third of a Jersey cord.

One-third paid for freight. Second winter after sale wood rose. A very cold winter, and wood higher then than since. That was all that cleared us.

Adjourned.

The map being called for, one is produced, alleged to have been found among Walling's papers.

Offer certified copy of letters of administration of Joseph Taylor, February 20, 1823.

Also, a certified copy of the inventory, February 26, 1823.

Also, certified copy of final accounts—balance appears of $1,080 33. Settled October term, 1824.

William Little, sworn. In 1829 I resided at Middletown Point; I was a storekeeper. I had vessels running to New York. I attended the sales of the Kearny property. I had no view of purchasing. I talked with Van Pelt on the afternoon of [the] first day; he called upon me, and asked me to join him and Ellis in purchasing the fishing point lot; he came to my store next morning, and on our way down we talked about it; on our way down I agreed to leave to Van Pelt to manage; he talked of getting Stephens to bid; I objected to him; he then agreed to get William Walling. Ellis had a dock on his own premises, between Key Port and Middletown Point. Van Pelt had a small dock.

Van Pelt and William Walling stood together. Van Pelt said to

Walling, "is that your bid?" Walling's answer was, "Yes, it was, or he thought it was." The crier said he did not take the bid from Walling. Van Pelt asked Walling a second time, and he said he thought it was his bid. It became a general talk. Some said if there were two bidders it ought to be set up again; others said no, it was struck off fairly. It was then agreed to submit it to the commissioners. They consulted, and decided it was fairly sold. We fixed upon no particular sum to give. Van Pelt wanted it set up again. Van Pelt, Ellis, and myself were to come in equally. Nothing was said about preventing improvement. We purchased for a speculation.

I presume Walling bid by nodding.

I don't recollect hearing Burrowes bid. I stood further from him.

Defendant rests.

Plaintiff offers—

1. Deed, April 28th, 1830. John I. Taylor to Isaac K. Lippincott, Ezra Osborn, Joseph Taylor, Leonard Walling, James Hopping, John Hopping, and David S. Bray. It conveys to the seven seven-eighths of the property, containing $212\frac{84}{100}$ acres, excepting twenty-four lots containing $8\frac{88}{100}$ acres, "which was surveyed April 9th, 1830, by Leonard Walling." Acknowledged April 28th, 1830, and recorded same day.

2. Power of attorney, May 24th, 1834, to John I. Taylor from the above grantees. Acknowledged same day, and recorded September 15th, 1834.

3. Deed of partition between the members of the company.

William Little, called. I know the handwriting of Isaac K. Lippincott. Paper shown. I believe it to be Lippincott's handwriting.

Plaintiff rests.

Defendant recalls—

Hendrick Van Dyne. The tavern-house lot was one of the first lots run off after deed to John I. Taylor.

Alfred Walling, sworn. (Map shown.) It is in the handwriting of Leonard Walling. The lots run off were run off in April, 1839.

Court adjourned.

Plaintiff offers to read in evidence certain written admissions of Isaac K. Lippincott. Defendant objects. Paper rejected. Exception taken to the decision of the court.

Statement of sales by John I. Taylor admitted in evidence.

Plaintiff rests.

Mr. Green, on the part of plaintiffs, moves to overrule deed of commissioners to John I. Taylor.

Court decides that it cannot be called upon for an opinion now, and does not feel inclined to give it until the charge.

Evidence.

UNITED STATES CIRCUIT COURT,
District of New Jersey.

Mr. Spencer's notes at trial of ejectment case.

Heirs of EDMUND KEARNY
vs.
VANDERBILT. } In ejectment.

Sullivan opens for plaintiff, 1 Bl. 2 Wall., 307.
Children of Edmund Kearny were—
James, born December, 1801, died in 1828 or 1829.
Horatio, born October, 1803.
John, born November, 1805, lost at sea 1825 or 1826.
Mary, born November, 1808, died in 1836.
Thomas, born September, 1810.
Anastasia, born October, 1813.
Catharine, born June, 1816.
Anne, born June, 1818.
And that lessors of plaintiff do not reside in New Jersey.
James Kearny, the elder, died in January, 1811. He was succeeded by Edmund Kearny, the father of the lessors at that date. The father and grandfather of James lived there before him.
1829. April. James Hopping, Edward Taylor, and Leonard Walling appointed commissioners.
1829. July. Order of sale.
" November 3 and 4. Sale made.

Lot No.	5	was sold to	Ezra Osborn for	- - -	$1,339	20
"	6	" "	"	- - -	753	13
"	7	" "	Isaac K. Lippincott	- -	1,223	61
"	8	" "	Richard C. Burrowes	- -	1,036	73
"	9	" "	I. K. Lippincott	- - -	135	79
"	10	" "	Ezra Osborn	- - -	194	69

(?) Vanderbilt pays $7,000; the land he bought cost at sale.
A gain on the two lots of 1,400 per cent.
Deducting improvements there is a gain of 1,100 per cent.
Read's proceedings in orphan's court.
One petition, April, 1829, of Daniel Holmes.
Badge of fraud in phraseology of report of sales.
Application for road, January, 1830. Affidavit annexed.
The defendant admits testimony of Mary Kearny, as taken from notes of Judge Dickenson.
Plaintiff rests.
Vredenburgh opens the defence.
Property sold for $20 000.
One hundred dwellings, several churches, &c. Whole amount of purchase money paid. Object of suit to recover land and all improvements, and retain purchase money.

Documentary evidence.

May 5, 1828. Seizin and death of E. Kearny, in 1822. James, one of the heirs, conveyed his ⅛ to Daniel Holmes & Co. Application to court for division. Commissioners, Leonard Walling, Edward Taylor, and James Hopping.

We will offer private act passed the last winter.

James Kearny sold for $1,600.

Daniel Holmes interested in ⅛, and yet comes forward to sustain sale.

In June, 1829, commissioners made map and division.

Offers—

Deed, May 5, 1828. James P. Kearny to Daniel and John W. Holmes for the one-seventh of property.

Proceedings of orphan's court, beginning April term, and ending January, 1830.

Petition to orphan's court, April, 1829.

Appointment of commissioners, same term.

July term, 1829, report of commissioners.

Do. do. order for sale.

January, 1830, report of sales.

January, 1830, order of approving sales, and ordering deeds.

Deed, commissioners to John I. Taylor.

Objections to private act.

Kent, 460.

Private act, same as common law convey, 2 Bl., 346.

Cruise, 516, title private acts.

Act of March, a private act.

Governor Vroom.

Act of 1841 is a public law.

Not applicable to particular case.

All the property of the citizens may come under it.

Deed being offered, objected to; act of 1841 offered to sustain its object. Deed for present overruled.

Offer private act.

Object.

1, no notice to heirs.

2 Bl., 345.

It does not appear that notice was necessary.

He says there must be notice.

Road act.

Vroom, being sovereign act of legislature.

Private laws and blessings, fairly, &c.

10 Peters, 294. Consent not necessary.

8 do. 88, 180.

These were cases where the deeds were given by those under whom the heirs claimed.

Wills declared to be valid against heir-at-law.

Shows no case decided.

Court must consider the act of 1844 as properly passed for the present subject, to subsequent proof, as to consent, &c. Deed admitted.

Sullivan now objects to the constitutionality of the act.

1. Under constitution of New Jersey, act 22.

That common law of England.

Court decline at present to hear the argument.

Other objections.

1. Right to trial by jury.

2. Establishes a different law for these parties from that of the other citizens.

Court admit deed.

Vredenburgh reads private act of 1844.

Court adjourns.

25th February, 1829, deed from John Hopping and others, to Vanderbilt.

1st April, 1830, deed from commissioners to John I. Taylor.

John Bartleson, sworn. Am editor of the Monmouth Inquirer; proves advertisement dated September 1st, 1829; proves receipts for printing 100 handbills.

Edward Taylor, sworn. Proves handwriting of receipts from commissioners.

1.	April 1st, 1830,	H. N. Kearny, - - -	$509 00
2.	do.	do. Daniel Holmes, - - -	1100 00
3.	do.	do. Joseph Taylor, guardian of Anne, Catharine, Anastasia, and Thomas, - -	500 00
4.	do.	do. Mary E. Kearny, - - -	1258 23
5.	April 12,	do. H. N. Kearny, - - -	749 23
6.	do.	do. Joseph Taylor, guardian - -	1802 55
7.	June 8,	do. Daniel Holmes, - - -	158 23
8.	April 1, 1831,	J. N. Holmes, - - -	1421 30
9.	do.	do. H. N. Kearny, - - -	1421 30
10.	do.	do. Joseph Taylor, - - -	400 00
11.	April 9,	do. do. - - - -	2461 54
12.	do.	do. do. - - - -	878 10
13.	April 2, 1832,	do. - - - -	775 34
14.	April 12,	do. do. - - - -	480 00
15.	Jan. 19,	do. do. - - - -	172 00
16.	May 3, 1831,	do. - - - -	585 40
17.	May 7, 1832,	do. - - - -	2000 00
18.	April 1, 1833,	do. - - - -	72 00
19.	April 15, 1833,	do. - - - -	180 00
20.	April 16, 1833,	do. - - - -	280 37
21.	May 28, 1833,	do. - - - -	12 30
22.	April 7, 1834,	do. - - - -	3165 00
23.	Sept. 27, 1831,	T. Kearney to Jos. Taylor - -	2966 15
24.	Sept. 7, 1837,	Anastasia and husband to do. -	139 93
25.	Nov. 21, 1837,	Catharine to Jos. Taylor - -	1756 00

26 March 22, 1838,	Catharine	-	-	-	919 75
30, do.	Anne	-	-	-	300 00
	do.	-	-	-	2649 97

I think property was advertised in two papers; I am satisfied it was done in one. Joseph Taylor was my brother. I think this was talked over in the family. I was acquainted with the property. My opinion was in favor of selling it; an unproductive property. I thought, and still think, it would have been injurious to the owners to divide it. This property was rented for something short of $300.

Joseph was older than me. I was living in New York at time of advertisement. The conversation was before advertisement. I was on property when Foreman was there. It was Joseph Taylor's opinion that it was better to sell after report of commissioners, or before. I presume Foreman hired of my brother.

Edward Taylor, sworn. Was one of commissioners. Walling and Hopping are dead; Joseph Taylor also; David S. Bray dead; I believe, Septimus Stevens, also. I cannot tell how I was appointed; did not know until I was notified. After appointment we went over land to see if we could divide it; I thought property could not be divided without prejudice to owners; could not make seven equal divisions. I never interfered to get order for sale. I was present at sale on the 3d and 4th Nov. It was sold fairly, for valuable consideration, to highest bidder. I would not have given $1,500 or $2,000, as much as it brought.

If property had not improvements on would not now fetch as much as it did. Never owned a foot of property, and never wanted to. It was not a good farming tract; the soil was generally light. I do not know that either commissioners or guardian was interested at sale; don't think they were; I have understood they were; Leonard Walling lived on part, I know. Property was struck off to persons named in report; it was fairly done too; no underhand work. Did not intend to state anything untrue in report. I know of no authority being given to purchasers to cut before deeds. The purchase money was all paid. The first payment was made at Stevens' tavern, Brown's Point; the second in Middletown.

Shortly after appointment, was informed of it. Can't tell who told me. A survey was made by commissioners and guardian previous to the report that the land could not be divided. Cannot tell the name of any person present at this survey. It was in June the survey was made; it was in warm weather. There was but one survey made. I was not present in court, when the report was made. I think the guardian did not swear us. I do not know whether we were sworn before we proceeded to divide. I was in twelve feet of crier when the sale was made of lot 8. Primrose Hopping was crier of that sale. When that lot was struck off, John Van Pelt claimed the bid. I said that Burrowes had better let it be put up again; he said it was fairly his. I know this story about the gun from hearsay. Van Pelt was nearer to crier than myself. Van Pelt wanted it put up again. There was no

consultation among commissioners about putting up again. There was considerable wood on this farm, otherwise it would not have brought so much; there was pine, oak, hickory, and cedar; the latter was poor. The money paid at Browne's Point was paid by the purchasers. Mr. I. K. Lippincott paid considerable. Don't know that John I. Taylor paid any on that day. Don't know that Osborn paid any on that day. Burrowes paid no money on that day. I cannot tell who paid for lot No. 8. Mr. Taylor produces paper; says it was given by Squire Osborn. The paper was given me since the trial commenced. I did not see John I. Taylor pay any money at Browne's Point or Truaxes. John I. Taylor did not take money. Cannot tell when Walling died. I did not take money away. I. K. Lippincott paid no money there. Don't know whether I saw Osborn pay any; do not know that I did. I do not know that John I. Taylor paid anything for deeds. I do not know that Leonard Walling and James Hopping paid anything. They did not pay for John I. Taylor.

Daniel Holmes, sworn. I bought of James Kearny, for $1,600; bought one-seventh. Heard W. Foreman value property at $12,000. Tract was surveyed by commissioners. There was no understanding with commissioners, before their appointment, that they would report for sale. Don't know that I knew who were to be the commissioners. That land could not have been divided without great prejudice to owners, as farm land would not have brought in one cent. Would have had a bad effect on any interest. Sale was two days. Lot No. 8 was put up the first day. It was bid up to $28 or $29 per acre. Adjourned by commissioners at my request. Night of first day I spoke to Burrowes to come down next day and make arrangements to make property bring more. Spoke to Lippincott next morning. Got adjournment to get up competition. No. 8 was put up next day, and brought $42 or $43 per acre. I went to Lippincott, Burrowes, Horatio Kearny, and Septimus Stevens, to get up company to buy lot No. 8. I knew if we could get a landing there it would help our section of country. I was interested further in one-seventh. Leonard Walling, James Hopping, and Joseph Taylor, was not interested in sale. I went to Hopping; he declined, because he could not as commissioner.

No. 8. [Richard Burrowes] was selected to bid for lot No. 8, and it was struck off to him. I think I named him. Richard Burrowes was highest bidder for lot No. 8. I was close to crier and Burrowes when lot was struck off. Osborn was one of company. I think John and Primrose Hopping were not parties to company—I cannot say.

Something was said to James to ask John to come in; this was at time James said he could not come in. I said I would give $15,000 for property; said so to commissioners and people around. I think my exertions increased price, by the difference between $15,000 and $20,000. The raising the company produced competition, and made the lots, 5 to 10, bring considerable more. The company first extended only to lot No. 8. At my suggestion we agreed to buy them as they were put up. I did not hold my share long. We applied for road im-

mediately after. There was no road to landing. While we were running out road the day surveyors met, Joseph Taylor asked me how much I would take for my share in the company tract. I asked $50; he offered me $40, and I took it. Out of this $40 I paid for fencing of Asher Holmes $15. At time of sale there was a small building on back part of farm. There are now 100 houses on the tract—Lockport or Sprowl tract; tavern house on part of No. 8. I think the company was made up morning of second day of sale. The deed was made to John I. Taylor, with my assent. I offered $15,000 before 3d and 4th of November. I think tavern lot sold to Vanderbilt is on No. 8.

Map of 24 lots is in Walling's handwriting. I understood from James P. Kearny there were 1,000 acres. The dwelling house was wood, a single house, two rooms and entry, about twenty-five feet. There were all kinds of wood; upwards of three hundred acres of woodland. There was some cedar. I know of none out of which roads could be made. I bought of James P. Kearny to sell again. I think lease to Foreman was made by guardian, with consent of Mary Kearny. I did not discover that there was less than 1,000 acres, after it was let out by Walling.

I and J. W. Holmes filed petition. I was not in court when petition was presented; Holmes neither. I think I gave it to a clerk, or some one. I named no one as commissioner. I did not know but what Luther Hartshorne presented it. I never knew who was to be appointed commissioners. I was on ground one morning a little while when they were surveying. Don't know how long they were occupied. Before the sale there was a talk in the neighborhood that the dock ought to be built on Fishing point lot.

Lippincott.
Burrowes.
Osborn.
Stevens.
Kearny.
Holmes.

Stevens first gave us information of the intention of the Middletown Point people.

I expect Lippincott's interest continued to time of purchase. Stevens backed out. He said he had not money, and never paid any thing.

Burrowes sold out about same time as I did. I think Burrowes sold to John I. Taylor.

Osborn, I expect, continued with company.

Kearny sold out to David Bray. I do not know who took Stevens's interest in company. I think Stevens told me at morning of first sale, of a Middletown Point company. Stevens was afraid that the Middletown Point people would stop improvement. I think I applied to James Hopping the second day. I think James was to speak to John on second day of sale. I cannot tell whether Primrose Hopping was a member. The company were to have an equal share. The company did not bid against each other, if they knew it. Burrowes bid openly

for lot No. 8. The crier gave notice that he would strike it off if he did not get another bid. A particular time was given by crier. When struck off, Van Pelt said he thought it was his bid. The crier said it was not. Van Pelt said [William] Walling was to bid for him. Walling was to bid if Van Pelt took finger off of gun. William Walling said it was not his bid. Van Pelt wanted it set up again; Burrowes declined. I think the matter was referred to commissioners. They decided it should not be set up again. Leonard Walling was a member of this company. I think James Hopping became a member of it. The surveyors met soon after sale. We applied to the next term after the sale for a road. January is the next term.

Wednesday morning.

Some wood on company's purchase. I considered myself in possession as soon as I bought him out.

Commissioners did not put me in possession. I think I sold out to Taylor after January court. Character for truth and fairness—never heard any thing against character of commissioners and guardians. I do not think the property ever would have brought more since. The advertisement was true in part. There were oysters planted in Kearny's time; they were very fine. Oysters became worse; they were taken. Key Port is the principal landing. I do not know that there is a better landing in bay. Cannot get up with sloop; steamboats ground. Sometimes the landing is bare. Between 1818 and 1821, the creek at Middletown Point was filling up. There was no more difficulty in 1829 than now. I have heard of no complaint of creek filling up. Oyster ground was on Lippincott's lot—the mansion farm.

Richard C. Burrowes, sworn. Was present at sale both days. I bought nothing first day. Quite a good many people at sale. Was there second day on invitation of Holmes; he spoke to me on afternoon of first day, towards night; should not have returned if Holmes had not spoken to me. I took it as a banter to return and buy Fishing point lot. Second day of sale Holmes and I agreed to purchase Fishing point lot, with others. The agreement originally extended to No. 8 only. The rest of company were—Daniel Holmes, Ezra Osborn, Isaac K. Lippincott, Primrose Hopping, Richard C. Burrowes. I knew nothing of Stevens until after purchase. I was to bid for lot No. 8, at Holmes' request. Leonard Walling, James Hopping, and Taylor, were not interested at time of sale, to my knowledge. Lot No. 8 was struck off to me; I was the highest bidder. Lot No. 8 was the first one put up after dinner. I think the mansion farm was sold to Lippincott before dinner. As the other lots were put up, we agreed to buy through each other. I think the lots were struck off to highest bidder. I sold out to Ezra Osborn. I understood it afterwards went to John I. Taylor. I received $40 advance. I did not think the purchase was worth much money to me. I cut no wood or timber. Deed by commissioners to Lippincott was made with every consent. I gave consent to James Hopping. I never heard any talk of purchasing until first day of sale.

On first day of sale farm and southern wood lots were put up. I think some lots were sold on first day. I cannot tell what lots were sold. I do not know whether I was present when No. 8 was put up on first day. Holmes said to me, "Dick, come down and let us buy the fishing point." Holmes told me it would make a landing some day. That was my inducement. Don't recollect any other inducement. I don't recollect Holmes saying anything about company at Middletown Point. When No. 8 was struck off Van Pelt claimed the bid. Primrose Hopping said it was my bid. There is only one person by that name. Van Pelt asked to have it set up again. I am impressed with the idea that the commissioners went by themselves to settle the matter. They did not have it set up again. Captain Taylor said, if they set up the lot again and played the fool with the bidders, they could not sell the property. The next lot set up was the one back of it. I considered my interest as going along with 5, 6, 7, 8, 9, and 10. It appears to me I spoke to Ezra Osborn about the purchase of one lot. I heard afterwards that Septimus Stevens and H. Kearny were members of company. I did not know whether there were 5 or 10 shares. I was unlimited as to price in bidding. I know of no limit. Some time in the ensuing spring I gave Hopping a right to make deed to John I. Taylor. When I bid for lot No. 8, I did not consider John I. Taylor as interested in that purchase. I have every reason to believe that John I. Taylor was not interested. Septimus Stevens backed out in consequence of purchase being extended to other lots. The evening after sale Stevens said he would have an interest in sale. He was only considered as having an interest in No. 8. The tavern house stands on the Fishing Point lot. James Hopping and Primrose Hopping were brothers. John I. Taylor was son of Joseph Taylor; Ezra Osborn was son-in-law of Taylor; Richard C. Burrowes, son-in-law of Joseph Taylor.

I sold out at first offer. I was glad to sell out. I should think Mr. Osborn did not consider property as selling for more than value.

William N. Forman, sworn. I lived on property 6 years. The first 3 years I gave $260; the last year, $300; as much as I thought it worth. I took it at auction at first, and have renewed each year at same price. It was a valuable farm, but unproductive—valuable from its location. I said I would give $12,000 if it was ever sold; I said this before James's sale. I do not think it could have been divided in seven shares to interest of heirs. I know that the farm was advertised; saw the advertisement. In Kearny's time the oysters were very good. Three hundred acres of woodland. They sold off some timber every year before captain's death. Timber in places will grow up in about thirty years. I have planted oysters in creek. In my time the oysters were as good as ever. I went on place in April, 1823; I left in April, 1829. Key Port is the best port along the bay. A steamboat plying regularly to New York. At low water steamboat cannot get to dock. You can jump across the channel in northwesters. At dead low water there is difficulty. The water grows shoaler to Middletown Point

creek. The mouth of Kearny creek is filling up. Steamboats can make a landing at Key Port when they cannot at Middletown. Key Port is at mouth of creek. I was at sale about an hour the first day; the same time the second. I heard nothing of this company on either day of sale. Captain Kearny and myself talked of this being a good place for a town. I do not recollect that Walling told me so. Joseph Taylor said so many times. It was a common topic of conversation before Edward's death. I never heard Walling say that he was picking up a company to purchase. I saw Horace Kearny. He said it was bringing its full value. The one that Horatio bought I should have bought. I bought about '36 or '37. I bought of Daniel W. Conover. He bought of Ralph R. Schenck. There were red cedars. What I saw of sale was fair. Character of commissioners and guardian unblemished.

Primrose Hopping, sworn. I was crier of the vendue. I struck off No. 8 to Richard C. Burrowes. He was the highest bidder. William Walling and Richard C. Burrowes were the only persons bidding some time before I struck off. William Walling on left hand, Burrowes on right. They were bidding twenty-five or fifty cents the acre. Walling the last, except Burrowes. The latter bid openly. Walling by wink. I gave time. After I got the last bid from Burrowes, I turned to Walling to get a bid, and repeatedly turned to him for same purpose. I dwelt an unusual time and got no bid. I dwelt longer because he looked at me, and I thought he was going to bid. Finally, I struck off to R. C. Burrowes. I gave fair warning that I was going to strike off. The lot was put up the first day. Had no instructions to strike off to Burrowes. The other lots all were struck off to the highest bidders. As far as I know, the commissioners and guardian were not interested at the time of sale. I got the highest bid. It was much better to have had it sold than divided. I did not consider myself as interested in company at time of sale. I think Richard C. Burrowes spoke to me. He said something like, if I had not a mind to come in. I do not think I told him I would come in. I do not recollect who bid for 8 on first day. I do not recollect on whose bid it was adjourned. I do not know at what time of day it was adjourned. I do not know whether any other lot was set up. I do not remember at what time of day Burrowes spoke to me. I do not recollect that he told me who were members of the company. I cannot tell whether any of lots from 5 to 10 had been sold when he spoke to me. Either he said, or it was the common talk, that the object in buying was to make a landing. When Burrowes asked me to join I did not say I would not. I extended time several times on sale of that lot. After Burrowes's last bid I gave further time. Walling was further off than Burrowes. Van Pelt claimed the bid. He said the bid of Walling was his. I requested that the property might be set up again. Commissioners decided it should not be put up again. I have had an interest in the company's property. I never paid any purchase money for my share. John Hopping, James Hopping, and myself had two-eighths. My share

was smaller than either of them. My share was sold to Captain Vanderbilt with the rest. My brothers made the payments, and after sale to Vanderbilt settled with me. There was a balance due me. I cannot remember when I came in as a partner. I cannot tell whose share in these lots my brothers got. I traded with Taylor's, and got for lot 17 seven and a half acres of land and some money. I think it was not made since the commencement of the suit. Lot No. 22 was sold by me to Cornelius Carhart. He gave me money; somewhere in the neighborhood of $200. At that time I took the seven and a half acres to be worth $20 per acre. Prices at highest. I think I sold 22 since the trade. No. 16 was sold by James before his death. There was money paid over to me by James Frost, the executor of James Hopping.

Edward Taylor replied, I do not know what proof was made to the orphan's court.

Primrose Hopping continued. The tavern house lot was situated in Middletown township, Monmouth county. The tavern house was part of lots 5 to 10. I expect it was part of the 24 lots run off by Walling. Leonard Walling's heirs have a building, and live on a lot there. The present building in lot No. 7, has been about ten or twelve years—twelve, I should think. Pretty soon after company was established, Leonard Walling built. The building now occupied by the widow, is the same that Leonard built. I think that lot No. 6 was sold to Joseph Huff & Co.; think that lot No. 6 forms part of tavern lot. I believe no buildings were begun before road was opened. Joseph Taylor's lot, No. 23, was sold to Cornelius Carhart. This lot was sold after Leonard Walling built. The twenty-four lots were run off, and set up at vendue. The vendue was for the choice of lots. In that case, the vendue was confined to the members of the company. I do not think there was a full company made up the second day of sale. Was present at the auction and made bids. I bid for the choice of lots, and obtained a lot. I cannot tell whether those who came in afterwards, came in equally with those who came in subsequently. I think N. Bedle did not bid at sale for choice. I believe J. Pollin did not bid at sale. I think, it is likely, D. S. Bray bid at sale. I do not know but what I might have been interested, when deed to Taylor was given. I consented that my interest should be conveyed to Taylor. I cannot tell who paid the consideration for the deed from the commissioners.

And putting all his transactions together, he has lost by property at Key Port. It has been the ruin of me. It happened by building, purchasing, and improving.

Isaac K. Lippincott, affirmed. I was at sale on the 3d and 4th of November. I went because I saw advertisement of farm. I went to buy the part containing the mansion, lot No. 1, for the cultivation of peach trees, oysters. I had no intention of buying any other part when I went there. No. 2 was set up first day of sale, but adjourned. No. 1 was first sold on the second day, just before dinner; we then

went to tavern at Brown's Point. When we went to Brown's Point, Stevens said a company was about to buy from Middletown Point, one of whom was Ellis. As Stevens supposed, they wanted to buy to prevent improvement that would interfere with Mr. P. He told me he owned one-half. If he was able, he would buy himself, rather than it should go into their hands. Just before dinner, on second day of sale, Holmes, Stevens, and myself, were together. I think Holmes proposed to me to buy it; this referred to lot No. 8. I agreed to join, if several could be found. Holmes said he would go and see, and after a while said he had found several. It was agreed that Burrowes should be bidder for company. Lot No. 9 was then set up. D. Holmes said to me, company had better buy No. 9 also. I said I thought of buying that for myself, that I would buy it, and if necessary for the company to have it, they might have that also. No. 9 was struck off to me.

No. 7 was next set up. Holmes said company had better buy this too. Holmes, Burrowes, Osborn, and self, consulted, and it was agreed that I should bid for it, without any limit as to price in either case. It was struck off to

No. 6 was then put up. It was agreed to buy on company's account. I objected to being bidder, but did not object to its being bought on company's account. I was unwilling to be bidder, because I feared the property might be left on my hands, and I made responsible for purchase money. It was agreed that Osborn should be bidder. It was struck off to Osborn.

No. 5. It was urged that we should buy this, because, as we must make an outlay of capital, it was better to have more land. Osborn bid for No. 5, and was struck off to him.

No. 10 was then proposed to be bought, that we might have more command of the shore. Don't know who proposed it.

I think property was sold fairly. I have no recollection of any frauds, &c., at the time that any others were concerned, than Holmes, Osborn, Stevens, Burrowes, Lippincott; that evening after sale, Horatio Kearny came to tavern, and was considered one of company.

Map shown witness.

The lots not colored are vacant. My opinion is, to divide the land among the heirs would have been great injury to their interest. I think the property would now bring about as much as it then did. I kept an account of the proceeds of company's purchases, put down debt and credit of company's interest. Since selling out I have stated an account. Profit, $312 50. From the time the deed was given, I was one-eighth owner. After deed was given, 24 building lots were first laid off. It was agreed that 16 should be set off in severalty, and 8 to be left to be sold. In 1830 we commenced building a dock, and built a sloop. Leonard Walling superintended dock, Hopping the sloop. The profits of sloop were put in. The tavern house and sheds

did not cost company less than $6,000. Deed was made to John I. Taylor with my consent.

I gave a deed to Vanderbilt for the property in dispute. There was a covenant of warranty.

Alfred Walling, sworn. Map shown. I made the map. The colored lots are improvements. I am cousin of Leonard Walling. I lived with him at time house of Leonard's was built. After road was run.

John Hopping, sworn. I was not present on either day of sale. On the evening of the first day of sale I went to James's to find out how they got along with the vendue. I think they had not then sold neither lot, but he said D. Holmes and others were about making up company to purchase Fishing Point lot. I asked him why he did not take a share, or whether he was going to? He said he was not, he was a commissioner, he could not. I told him he might tell them that I would take a share. About the time we met to lay out road, we agreed James should take share. The way that Leonard Walling came to come in was because Stevens refused to take. I solicited him. I think this was the same day. I had never been down there before.

I recollect a dock being built on property. I tell you, once for all, I cannot remember dates. I guess the dock was not commenced until after road. My brothers, James and Leonard Walling, superintended building first sloop at Compton's creek. I believe she was built in summer. Don't know that any wood had been cut on property when I laid out the road. I did not know how much the company was going to buy. James Hopping said the company had bought the lands back so that they might have no difficulty in opening a road to the landing. I did not know how many were to belong to this company on night of first day of sale. I calculated there were to be eight in company, and calculated that he must abide by what they agreed to, and sent my name down. I derived my notion that there were to be eight from what James told me. This was last night. I might have made up my mind on first night, that there were to be eight, as about eight miles below, where we built a sloop, there was a company of eight. There were Wm. Morford, Thos. Morford, James Hopping, John Hopping, William Murray, Col. Burch, Richard Stout, Jacob Rapp.

I did not know on night of second day of sale how many were in company. My impression was, there were two or three afloat who would be willing to come in or go out as the rest said. I should consider one was Primrose and one was Stevens. I did not make any arrangement on night of first day of sale as to who should pay for my share. Does not know how my share was paid for, or when. I paid for my share; can't tell to whom. I joined in deed to Vanderbilt. I myself received from Vanderbilt my share of purchase money.

The 23 acres coming to myself and brother when we made a division were sold to Ezra Osborn and Garret Hendrickson; they gave us $100 per acre; I was to have $\frac{3}{8}$, James $\frac{3}{8}$, and Primrose $\frac{2}{8}$ of $\frac{1}{4}$; I did not convey the $\frac{3}{8}$ to James Hopping by any deed or other paper;

James Hopping and self paid all the amount of my purchase in company's lots; don't know who took charge of second instalment; on the night of second day of sale I saw no one but my brother; he told me the number of the lots bought by the company; I knew no further than what my brother told me as to persons who had offered themselves; he told me Daniel Holmes, Burrowes, Lippincott, Osborn, Stevens, self had offered themselves, and Primrose Hopping; Primrose came in and acted as a member of the company; Leonard Walling, I think, took Stevens's place; I can't make up my mind that they consisted of any particular number; I was not present at Brown's point when purchase-money was paid, nor at tavern; I don't remember that I made provision to pay either instalment.

My brother James, neither on first or second day of sale, told me he was a member of the company.

Thomas Arrowsmith, sworn. Offers to prove character. Commissioners were my neighbors; their characters stood unimpeached, and I suppose them to be as high as any in the county of Monmouth; Walling and Hopping did a great deal of public business; knew Joseph Taylor well, his character stood above reproach, and without suspicion; was acquainted with property; it brought more than it was supposed it would; Walling undertook to say the property would bring $20,000; it was cut up in lots for those disposed to speculate in wood; I supposed at the time that the course of commissioners was advantageous.

Leonard Walling died between 2 and 3 years ago, and Joseph Taylor died in 1836; James Hopping about the same time; I was at the sale the first day; I made bids; I bid for lot No. 2; in winter of '31 I sold 200 for 31 shillings a cord; wood from time of sale a demand.

Offer to read remonstrance.—Vroom—the presumption is that it was against their consent.

George Sullivan, sworn. Copies of both these papers were presented by me to speaker; I asked him to present the first petition, dated February 12, 1844.

The second petition was presented to the speaker on the 22d of February next, with the request that it should be presented; the petitions were presented in the assembly, the clerk read it, and copies I saw distributed to the table of each member by the sergeant-at-arms.

It was presented in print; the original was signed by myself; I act under a power of attorney; not a sealed power from Horatio; so far as the matters come within my knowledge they are true; the affidavit I laid on the table of the committee; a mortgage was given, and it is in my hands; it was given to meet the exigencies of T. Kearny; it was executed by his sister, Anne E. Kearny, to my firm; the amount of that mortgage was $3,000; that mortgage was given on the lots 5 to 10; Thomas and Catharine Kearny conveyed to Anne for the purpose of raising money; there never has been any money advanced on mortgage; Thomas Kearny was unable to raise money to carry on suits, and for that purpose a conveyance was made to Anne, and she executed a mortgage to my firm; it is a law firm; I have no indemnity for a penny expended; there was a defeasance accompanying them.

Evidence.

Notes of Mr. Vredenburgh.

CIRCUIT COURT, UNITED STATES,
New Jersey district.

Am. Den ex dem., THOMAS KEARNY and others, plaintiffs,
vs.
OLIVER VANDERBILT, defendant.
} In ejectment.

Evidence on the part of the plaintiff, taken at the trials in said court in October, 1842, and in April, 1844.

1st. Will of James Kearny, dated 15th January, 1811, devising Key Grove to his brother, Edmund Kearny, and all other lands in New Jersey. Probate 23 Jan., 1811.

Mary Kearny being sworn, says: I was the sister of James Kearny; he resided on the Key Grove farm, and I with him; it is at the mouth of Point creek, in Monmouth county; he lived there all his life; died 17th January, 1811, aged 61; my grandfather and father lived there, and I was born there; brother James died in county of Richmond, New York; was brought to Key Grove, and buried in the family vault; Edmund immediately took possession, or rather he hired a man to take possession, and he came there in April, 1811, and died in 1822, in December; place generally thought about 900 acres; Jacques' tavern is on the tract; Edmund Kearny's children were

1. James, born December, 1801.
2. Horatio, born October, 1803.
3. John, born November, 1805.
4. Mary, born November, 1808.
5. Thomas, born September, 1810.
6. Anastasia, born October, 1813.
7. Catharine, born June, 1816.
8. Anne, born June, 1818.

James died 1828 or 1829, no children.
Horatio still lives in Ohio.
John died in 1825 or 6; never married.
Mary died in St. Croix, West Indies, 1836; left no children.
Thomas lives in Mississippi.
Anastasia in Ohio; married to George C. Thomas.
Catharine is living in Mississippi.
Anne is here now; resides in New York.

Catharine moved to New York from Jersey City, this October two years ago; Anne same time; Anastasia came over to Jersey City from Detroit, and went to New York at same time; they have visited in New Jersey since, but not resided here.

Thomas went to Mississippi more than ten years since, and has resided there since; Horatio went to Ohio, 1836; continued there; it was

not longer than two years this October since we lived in New York; we have resided at our home in New York since 1st October two years ago.

The plaintiffs then read in evidence the proceedings in the orphan's court of the county of Monmouth, relating to the partition and sale of the real estate of the said Edmund Kearny. Prout the same.

Also, a certified copy of a petition for a road on said Key Grove property to the Monmouth Pleas, dated Jan. term, 1830, and the affidavit of Leonard Walling relating to the same, prout the same.

Whereupon the plaintiffs rested.

Whereupon the defendant, Oliver Vanderbilt, gave in the following evidence:

1st. Deed from James P. Kearny to Daniel and John W. Holmes, dated 4th of May, 1828. Consideration, $1,600. Prout the same.

2d. A certified copy of said proceedings in said orphan's court.

3d. Deed from the commissioners appointed by said court, to John I. Taylor, dated the 1st of April, 1830. Prout the same.

4th. Deed dated 25th February, 1839, from John I. Taylor and wife, and others, to Oliver Vanderbilt. Prout the same.

5th. A certified copy of private act of the legislature of New Jersey, entitled "An act to confirm the sales of the real estate whereof Edmund Kearny, deceased, late of the county of Monmouth, died, seized." Passed Feb. 14th, 1844. Prout the same.

Edward Taylor, of New York city, being sworn, says: The property at Key Grove was advertised for sale by the commissioners in two papers in the city of New York. I was with Joseph Taylor, the guardian, when he did it. I was acquainted with the property. My impression is, it was best to sell it. It was considered very unproductive as it laid. My impression was, and is so still, that it would have injured the owners to divide it. It was rented short of 260 dollars the first years. One or two years, 300 dollars. I was born in Monmouth. I am well acquainted with this property. Joseph Taylor, the guardian, was my brother, and older than myself. I was living in New York at the time of said advertisement. Before we put the advertisement in the papers we had a conversation about it with Messrs. Halsted and Bowne. I presume it was not before the order of court for sale. I was at Key Grove after Kearny's death, and before sale. It was the guardian's opinion it was better to sell. I don't recollect hearing him say so before James Kearny sold to Holmes.

Capt. Edward Taylor, of Middletown, Monmouth county, New Jersey, being sworn, says: I was one of the commissioners appointed by the orphan's court to divide the real estate of Edmund Kearny. The other commissioners, Walling and Hopping, are dead. Joseph Taylor, the guardian, David S. Bray, and Septimus Stevens, are also dead. (Oct., 1842.) I shall be eighty years old this month, (April, 1844.) I don't know how I was appointed commissioner. I was

appointed, and took it upon myself to serve. I did not know I was appointed till I was notified of it. I attended the survey of the property the whole time after our appointment. I am confident we could not have divided the property without prejudice to the owners. We all concluded that the property could not be divided with advantage to the heirs. I did not use any means to get order to sell. I attended the sale both days till it was all sold. It was sold fairly, and to the highest bidder. I would not have given as much by 1,500 dollars for the property as it did bring, and perhaps not as much by three thousand. If the improvements were off it now, I don't believe it would bring as much now (April, 1844,) as when it was sold. I never was interested in this property—never wanted to be. There was not a good farming field on it. At the time of the sale neither of the commissioners or the guardian were interested in the sale. They might have been afterwards, but don't know when. The persons reported to the court were those to whom it was struck off. There was no underhand work there. The purchase money was all paid, and been received by the heirs.

The commissioners surveyed the property shortly after they were appointed. This was done before the report to the court that it could not be divided, in June, I think; Joseph Taylor, the guardian, was present. I was present, and within eight feet of the crier, Primrose Hopping, when lot No. 8 was struck off. I know it was fairly done. The crier tried several times to get another bid. It was cried thoroughly, and struck off to the highest bidder. The crier cried it for some time, and gave timely notice that it would be struck off. I thought him tedious. The day was creeping away, and a good many lots to sell. Burrowes bid audibly. After it was struck off, John Van Pelt claimed the bid. I told Burrowes he might, if he chose, set it up again, which he refused. I am certain Van Pelt did not bid. It was fairly knocked down to Burrowes, and I then said so. It was the opinion of myself and the other commissioners that we could not put it up again without Burrowes' consent. There was no consultation about the other lots. There was wood upon the Key Grove property. That was the chief object. If it had not been for the wood, it would not have brought as much as it did. All the money was paid by the purchasers. Isaac K. Lippincott was the largest purchaser. I don't know if John I. Taylor paid any thing the day the deed was delivered. I know that the title was made to John I Taylor, at the request of the purchasers. I think they all consented that it should be so made, and we did so. We should not have made it to John I. Taylor for these lots unless we had been requested. If the property had not been laid off as it was, it would not have brought near as much as it did. We received all the purchase money. None of the purchasers had any authority from me, nor, as I presume, from either of the other commissioners, to enter and cut down the wood before the deeds were delivered.

Richard C. Burrowes, being sworn, says: I was present at sale in

1829, both days—good many people at sale. Mr. Holmes spoke to me in afternoon of first day. It was just as I was getting horse to go home. I did not, before Holmes spoke to me, intend to return the next day. It was a kind of banter to come back next day, to try fishing point lot. I went back next day. Next day, Holmes and I had an interview, and agreed to purchase that lot, with others. The agreement originally extended only to lot No. 8. Mr. Lippincott, Holmes, Ezra Osborn, Primrose Hopping, Richard C. Burrowes. I knew nothing of Stephens till after the purchase. D. Holmes was the active man. I was to bid for lot No. 8 at D. Holmes's request. Neither Leonard Walling, James Hopping, or Joseph Taylor, were interested in that sale, to the best of my knowledge. Lot No. 8 was struck off to me as the highest bidder. Lot No. 8 was first lot put up after dinner. Lot No. 1 was struck off before dinner to Isaac K. Lippincott. Mr. Holmes was the most active in getting up company to go in with the other lots. All the lots were struck off to the highest bidder. I sold out my interest to Ezra Osborn, which eventually went to John I. Taylor, at $40 00 advance. I sold out because I did not think I would make much money, and concluded I would get clear of it. I did not cut off any wood or timber on this land. The deed to John I. Taylor was made with my consent, who was then a single man. I never heard any conversation about these lots until afternoon of second day of sale. The farm was cried first day, and some wood lots. Some of wood lots sold first day. I sold out the evening of the day I bought. I took no interest in it first day. Just as I was mounting, Holmes said: "Dick, come back to-morrow, and let us buy fishing point." Holmes said it might grow into a landing. That was my inducement, that it might grow into a landing. I think I knew a company being formed at Middletown Point. John P. Van Pelt claimed the bid, I think, when No. 8 was struck off. The crier said it was my bid. There was but one person by name of Primrose Hopping. Van Pelt insisted to have it set up again. I am at present under impression that commissioners went by themselves to decide this bid. They did not put it up again. Captain Taylor said: If they put up the property again, and played the fool with the bidders, they could not sell the property. I think the lots were bought as we went back after fishing point.

After the lots were struck off, I heard that Stephens and H. Kearny were interested at the time these lots were struck off. I did not know if five or more were in company. I was not limited as to price in bidding for Fishing point lot. I do not know of there being any limit to the price of the other lots. It was in the spring, towards warm weather, that I gave James Hopping permission to make deed to John I. Taylor. When I bid for lot No. 8, I did not consider myself bidding for John I. Taylor, or that he was in any way interested in the purchase. I believe he was not there, or interested. Stephens backed out in consequence of purchase being extended to the other lots. On the evening after sale, Stephens said he would abandon these purchases. Ste-

phens did not consider himself as interested in any lot but No. 8. James and Primrose Hopping are brothers. I was not related to Walling, or either of the Hoppings. John I. Taylor was a son of Joseph Taylor. Osborn married Joseph Taylor's daughter. I also am son-in-law of Joseph Taylor. I did not sell out on account of capital wanted.

I did not expect that D. Holmes's object was to make the most of the property, till nearly through with the purchase, and then I sold out at the first offer, and made the banter.

I was glad to sell out.

Andrew Bowne being sworn, says: I am acquainted with the handwriting of Horatio Kearny. These are his signatures to receipts for his share of the purchase money:

1. April 1st, 1830, to commissioners, - - - $509 00
2. " 12th, " " - - - 749 23
3. " 1st, 1831, " - - - 1,421 20

(Prout the three several receipts read in evidence.)

This is the handwriting of Mary E. Kearny, viz:

1. April 12th, 1830, to commissioners, - - $1,258 23

(Prout the receipt read in evidence.)

This, I believe, is the signature of George C. Thomas, and this of Anastasia, viz:

1. April 7th, 1837, to John I. Taylor, administrator of Joseph Taylor, guardian of Anastasia, the sum in full of - - $129 93

(Prout the receipt read in evidence.)

These are the signatures of Catharine Kearny.

1. November 21st, 1837, to Edmund Taylor & Co., on account of my late guardian, - - - - - $1,756 00
2. March 22d, 1838, in full, - - - - 993 75

(Prout the receipts read in evidence.)

This is the signature of Thomas Kearny.

1. September 27th, 1831, to Joseph Taylor, administrator, $2,965 15, in full. A release under seal.

(Prout the same read in evidence.)

These are signatures of Caleb O. Halsted.

1. August 30th, 1838, - - - - - $300 00
2. January 19th, 1839, - - - - 2,649 97

in full of Ann's share. Signed Caleb O. Halsted, guardian of Anne Kearny.

(Prout the said receipts read in evidence.)

Witness—That money has since been paid to Anne Kearny, account finally settled, and money paid with interest, since she came of age. Closed since.

Daniel Holmes being sworn, says: I bought of James P. Kearny his share of ¼th in the property. I told James, after I bought, that he might have the share back again at the same price. That was as much

as I could afford to give. William Forman lived on the property and valued it at $12,000, and said that was all it was worth. The land was surveyed by commissioners. I had no understanding with commissioners that they should report that it could not be partitioned, nor do I think I knew who were to be commissioners, till the court appointed them. I did not interfere in any way in procuring the commissioners to report that land could not be partitioned.

It could not have been partitioned without great prejudice to the interests of the owners. A partition would have affected my interest badly. I was present at sale. They were two days at the sale. The lots were run off to the best advantage, to make them bring the highest price. Lot No. 8 was put up first day. It was got up to 28 or 29 dollars per acre the first day. It was not sold that day. I solicited the commissioners to adjourn over, in hopes of getting more next day. I spoke to Mr. Burrowes to come down next day, to try to make arrangements to make it bring more money. The object was to get up competition to make the lots bring more money. John W. Holmes, my partner, refused to join. Lot No. 8, next day, brought $42 or $43 per acre. I went to Mr. Lippincott and Burrowes, Stephens, and Horatio N. Kearny, the second day, and got them to join to bid. I had two interests, one to help our section of country if we could get a dock. I was also interested in getting the property up as high as possible. Neither James Hopping or Leonard Walling, or the guardian, were interested at the time of the sale. Lot No. 8 was struck off to Burrowes. He was selected to bid. I had pretty much all to say about it, and went from one to the other, to get the company started. It was only a verbal agreement.

Richard Burrowes was the highest bidder for lot No. 8. I was close by the crier when it was struck off. I think Osborn was one of the company. I rather think John and Primrose Hopping were considered in the company at that time. I think something was said when James declined about his speaking to John to come into the company. This was at the time James declined being one of the company. I offered $15,000 for the property. I think the whole property brought the difference between that and what it did bring by means of the management of the commissioners. I can't say how much more 5, 6, 7, 8, 9, and 10 brought, by means of this company, than it would otherwise have done. The company did not extend originally to any but lot No. 8. We concluded to buy the other lots as they were put up. I did not hold this property long. We applied for a road right away. There was no road, and while we were running out the road by surveyors, Joseph Taylor asked me what I would take for lots 5, 6, 7, 8, 9, and 10. I told him $50. He said he thought it was too much. *He said he thought it was too much.* He bought of me at $40. I paid out of this $15 to help him make his fence. The title was to be made to the company. I thought the sale was as fair as it could be. There must now be about 100 houses on No. 8.

Lock Port is not built upon company's tract. The tavern house is

on No. 8. I think the company was made on morning of second day of sale. It was advertised in New York, by agreement with James Taylor. I was willing the commissioners should make the deed to John I. Taylor. The $15,000 was offered by me after order of sale, but not on days of sale.

The map of twenty-four lots is in Leonard Walling's handwriting. James P. Kearny told me there was 1,000 or 1,200 acres when I bought. It turned out not so much. Those tracts of land never held out.

There was all kinds of wood on it. Upwards of 300 acres of wood. I was not present when it was surveyed or run by commissioners. I bought it to sell again; told him, James P. Kearny, at the time. Lease was made by guardian, with consent of Mary Kearny. We discovered after it was run out by Walling, that it did not hold out 1,000 acres. I was not present when the petition was presented to the court. I guess I gave it to the clerk, or some attorney. I got Leonard Walling to survey for road. I was sheriff at the time, and did not attend to it at all. I think I got Salter Hartshorne. I was not there at survey by commissioners. I was there only a little while the morning it was surveyed. At the sale there was a talk that Fishing Point lot, (No. 8,) would make a good landing. That is the reason I got up the competition, otherwise it would have been struck off the first day. Lippincott, Osborn, Burrowes, Stephens, Mr. Kearny, and self, were the company. It was got up to create competition. Stephens said they were going to buy it at Middletown Point, to let it lay dormant. I expect Lippincott's interest continued up to Vanderbilt's purchase. Septimus Stephens backed out right away; had no money. He said he had not money enough to pay, and never advanced any thing. I believe Burrowes sold out about the same time to John I. Taylor, before deeds. I think Kearny sold to Bray. Don't know who come in place of Stephens. They were willing to let almost any good man come in. I think it was the first morning of sale. Stephens said the company at Middletown Point were going to bid. Stephens' object was to prevent Middletown Point getting it to lay dormant. He owned property at Brown's Point. Don't recollect who bid first day. Part of Key Grove was sold the first day. It was, I think, the second day. I applied to James Hopping. I think James Hopping was not to speak to Primrose. I think he was spoken to to speak to John, not positive. A good many people were there. Can't say when Primrose became a member, or if he became so at all. The company formed were to have an equal share of lots bought.

We did not bid against each other, of course. Others bid against the company. Burrowes bid out audibly. Crier gave proclamation if he did not get another bid he would strike. Crier gave so many minutes or he would strike it off. After giving proclamation two or three times he struck it off, and then Van Pelt claimed it as his bid. Crier said it was not. Mr. Walling said it was not his bid; said Van Pelt kept his finger on the gun too long. Burrowes said it was fair,

and it was referred to the commissioners. The report was, that the lot was fairly struck off, and fairly sold, and they did not think it was right to set it up again.

I think the surveyors met to lay out road shortly after sale. I applied to the next term of court after sale for road.

There was some but not a great deal of wood on company's purchase. None of the wood was cut while I was a member of the company. I never went into possession, or exercised acts of ownership over it. I considered myself in possession as soon as I bought James P. Kearny out; I did not exercise any acts of ownership, unless to lay out road would be so considered. I never heard any thing against the character of the commissioners and guardian for truth and fairness. I don't think this property, if it was in same situation now as at the sale, that it would bring as much now as then. I don't think the property would ever have brought more since. We tried to make it bring as much as possible. Advertised in large terms. It was thought it was good for oysters, but it did not prove so. Oysters were good in Kearny's time, but depreciated, and were abondoned. There is a landing at both Lock Port and Key Port, but Key Port is the principal. Vessels often ground. Water is about a foot deep at low tide. Creek to Middletown Point is not filling up as much now as formerly. There was no more difficulty in navigating creek in 1829 than now. The oyster ground was not upon company's purchase, but upon lot No. 1.

These are my receipts, (as follows:)

April 1st, 1830,	to commissioners	- - -	$1,100 00
June 8th, 1830,	" - - - -	-	158 23
April 1st, 1831,	" receipt of John W.	-	1,421 30

Prout receipts read in evidence.

These are receipts of Joseph Taylor, guardian of Thomas, Anne, Anastasia, and Catharine:

April 1st, '30,	to commissioners	- - -	$500 00
April 12th, '30,	" - - - -	-	1,802 55
April 1st, '31,	" - - - -	-	400 00
April 9th, '31,	" - - -	-	2,461 54
April " '31,	" - - - -	-	878 10
April 2d, '32,	" - - - -	-	775 34
April 12th, '32,	" - - - -	-	480 00
Jan'y 11th, '32,	" - - - -	-	172 00
May 3d, '32,	" - - - -	-	585 40
May 7th, '32,	" - - - -	-	2,000 00
April 1st, '33,	" - - - -	-	72 00
April 15th, '33,	" - - - -	-	180 00
April 16th, '33,	" - - - -	-	280 37
May 28th, '33,	" - - - -	-	12 30
April 7th, '34,	" - - - -	-	3,165 00

Prout receipts read in evidence.

Daniel Holmes, witness, proceeds: I gave James P. Kearny $1,600 for his one-seventh, and out of that retained the amount due on the mortgage to Capt. William Forman. Whole consideration was $1,600 00. I did not give as much as I thought it was worth, but as much as I was willing to give. There was a great deal of shore and marsh, and no buildings on the property except mansion house, &c. Mansion farm was sold alone for better selling. No buildings else. No roads except bye-roads with bars. It was grown up in bushes, &c. Buildings have been put on since. Mansion farm was very much out of order; poor and sandy the best of it. Fishing Point lot (No. 8) sandy—very poor—very little wood on it. The farm at time of sale was valued at $15,000 00. That was thought a fair price. I offered to give it. Neighborhood thought that was as much as it would bring. John W. Holmes would not go in with me. I went to commissioners on the first day, and begged them to adjourn it (No. 8) over, as they could not get enough that day. We thought that lot more valuable to the interests of our section than any other lot. They adjourned it over. There was a report from Septimus Stevens that a company at Middletown Point was going to buy up that lot to prevent competition. I asked Burrowes to come back, and we would get up a company against them. I understood on first day that lot was adjourned on first day on Middletown Point company's bid. There were people from that quarter bidding, and no competition. My object was to make property bring as much as I could. To make that lot valuable it would require considerable capital, so I sold out. My only object in speaking to Burrowes was to make property bring as much as I could by competition. I think the agreement extended only to Fishing Point lot, (No. 8.) It was at my instigation that they bought other lots afterwards. All appeared afraid. If No. 8 had been bought by Middletown Point company, and laid neutral, it would have injured the rest. Fishing Point dock is all that has raised up the village. No one individual was willing to bid alone for No. 8; at least I was not, and none others did.

William N. Forman being sworn, says: I lived on this property from 1823 to 1829—at rent, the first five years, of $260 per year; for the last year $300. I thought it as much as it was worth. I took it at auction the first five years at $260; the last year at $300. It was valuable, but very unproductive. I told James not to sacrifice it; if he sold I would give $12,000 for the whole. I had then a mortgage on James' share for $400. It could not have been divided with advantage, or without great prejudice to the heirs.

I read the advertisements of the commissioners at the time. Oysters were good in Kearny's time. There was not much wood on it, no timber, but a good deal of young stuff and bushes. They sold off wood every year before old captain's death. It would take about thirty years to grow up in some places; the oak longer. The oysters were as good in my time as they ever were. I went in possession in April, 1823; I

left in April, 1829. I thought it (the advertisement) spoke like other advertisements, in the highest terms. A steamboat plies now regularly between Key Port and New York. At dead low water a boat cannot get to dock. As the creek runs up it grows shoaler. The mouth of Kearny creek is filling up. I was at sale about an hour each day of sale, merely to look at them. I did not hear of the company being in existence either day of sale. Capt. Kearny and self talked about this being a good site for a town; my advice to him was to sell fifty acres; but he said he was too old. I don't recollect that Leonard Walling said anything about its being a good place for a town. All the neighbors talked about it. I and Joseph Taylor have talked about it a great many times. It was a common conversation before Kearny's death, and his brother James before him. I saw Horatio N. Kearny at that sale. Horatio said it was selling well. The one that Horatio bought, if he had not bought, should have bid for it. It was the only one I wanted at the price it went for. I bought and now hold a house and lot there, built in 1836 or '7. I bought of D. D. Conover. He bought of Ruleff R. Schenck. Stunted cedars—very knotty—grow up after pine cut down.

The sale was as fair, I thought, as sale could be. The character of commissioners and guardian *were* unblemished; never heard anything against any one of them. The lot I bought had a house and blacksmith shop on it, and I got a warrantee deed.

Primrose Hopping being sworn, says: I was the crier of this vendue. I struck off No. 8 to Richard C. Burrowes. He was the highest bidder. William Walling and Richard C. Burrowes were the only two bidders some considerable time before it was struck off; one stood on my right hand and the other on the left. William Walling was on left hand and Richard C. Burrowes on the right. They were bidding twenty-five or fifty cents per acre. William Walling was last bidder, except Richard C. Burrowes. Burrowes bid openly, and Walling by a wink. I had a time-piece, and gave warning that if I had not another bid I would strike it off to the highest bidder; and after I got a bid from Burrowes, I immediately turned to Walling to get a bid, and did this repeatedly; and dwelt an unusual time to get a bid, but could get none. I dwelt because he looked at me as if anxious, but never bid; and finally I struck it off to Richard C. Burrowes. I gave fair warning that I was going to strike it off. I think it was put up at the first day, but don't recollect the amount it bid up to. I had no instructions from commissioners to strike it off to Burrowes. I had instructions from Edward Taylor several times not to dwell so long upon the property. The whole farm was struck off to the highest bidder, to my certain knowledge. Neither of commissioners or Joseph Taylor were interested in this property at the time it was sold. I got the highest possible price for each section of the property. It was much better to have the property sold than partitioned. I did not consider myself interested in this property at the time it was struck off. I think Richard C. Burrowes spoke to me about it. I don't recollect what I said. I don't recollect what the precise words were. I don't think I gave him a decided answer.

I think Burrowes spoke to me on the second day of sale. I don't recollect that he told me who were concerned in the company. I can't say if any of the company lots had been sold when Burrowes spoke to me. I am not sure if Burrowes said it to me, or if it was the common talk to try to make a landing there. When Burrowes asked me, I think I did not tell Burrowes I would not join. I extended the time several times in the sale of No. 8. I gave further time after Burrowes' last bid. I think Walling was a little farthest off. I did not know Van Pelt as a bidder. Van Pelt claimed the bid. I requested the property to be set up again. That was my custom. It was referred to commissioners, and they decided that it was stricken off fair and should not be set up again. I did have an interest in company property afterwards. I never paid any of the purchase money. James, and John, and self had two-thirds. They were my two brothers. My share was sold to Capt. Vanderbilt with the rest in 1839. I depended on my brothers. They made payments, Brothers received purchase money, and accounted to me at our settlement after. There was a balance paid me. We had other dealings. I can't remember when I came in partner with them. I can't say whose share of these lots James and John got. I don't know which of my brothers I got the share of, John or James. I don't know when, or if before deed to John I. Taylor. I have no knowledge when I came in a partner. John I. Taylor gave me some land in exchange for lot No. 17, and some money. He and Joseph Taylor gave me 7½ acres back, next to Vandine's. The trade was made several years ago, before the commencement of suit. Lot No. 22, or small lot, was sold to Cornelius Carhart for about $200; it might be 100. The 7½ acres were not worth over $20 per acre. The prices were highest at time of trade. The lot No. 16 was sold by James Hopping before his death. I settled some of the money with Frost, the executor. There was money paid to me by Frost, but I don't know how much. The old tavern house was on the company property; expect it was part of the twenty-four lots as run off by Walling. Leonard Walling's heirs own a lot No. 7, on a map bearing date 1830. The building has been on ten or twelve years. Mr. Walling built pretty soon after company was established at Key Port. It is the same building now occupied by his widow. The lot No. 6, put down to James Walling, was sold afterwards to James Haff & Co.; and I rather think it was sold in his lifetime, but not certain. Think it forms part of the tavern house. No buildings were erected before the road was opened. Lot No. 23, on Walling's map, marked to James Taylor, was sold to Cornelius Carhart; don't know when; after Leonard Walling built there; several years after I should think. All the twenty-four lots were run off, and set off at vendue. It was a vendue for the choice of lots, as I believe, confined to the members of the company. I don't think there was a full company made up on second day of sale, and how long afterwards I can't say. I was present at the auction for the twenty-four lots, and made bids, and obtained a lot. I don't know how many persons bid at the sale for the choice of lots; think

N. Bedle did not bid, nor J. Polin; think it likely David S. Bray did. I don't know but what I might have been interested in the land when the deed was given to John I. Taylor. I consented that my interest in the property should be conveyed to John I. Taylor. I do not know who paid the money. I never saw any of it paid; don't know whether any of it was paid by Taylor.

Taking what I paid out and what I received, it has been a loss to me. It has been the ruin of me. Building and improving put me so much in debt I had to make an assignment to my creditors. John and James Hopping are my brothers.

Isaac K. Lippincott being duly affirmed, says: I was at sale the 3d and 4th of November, 1829. I saw the advertisement in the papers, and that is the first I knew of it. My view was to buy the mansion place, for oysters and peaches. I had no expectation or wish to buy any other part of the property when I went down. It was after I bought the farm, and when we went to dinner that Stevens said he understood that Middletown Point intended to buy it, No. 8, and he supposed to suppress improvements. I understood thas Stevens owned one-half the property at Brown's Point, and that he thought if they, at the Point, got it, they would only allow a cheap wharf to carry off wood in the winter. He said if he was able he would buy it himself, rather than it should go in their hands. Just before dinner, on second day of sale, Stevens, Holmes, and myself, were together; Stevens was talking about it. I think Holmes said, let us join and make up a company and try it. It was only the Fishing point lot, No. 8. It was agreed it should be bought, if several could be found to join. Holmes went out, and said he would go and see if he could find some, and after a while returned and said he had found several. It was agreed that Burrowes should be the bidder. After lot No. 8 was struck off, No. 9 was set up, and Holmes said to me, the company had better buy that also. I told him that I thought of buying that for myself; but if it was necessary for the company to have it, they should have it. That was struck off to me. The next was No. 7, in rear of Fishing point lot. Holmes said, the company had better buy that too. Consultation was had between Holmes, Osborn, Burrowes, and myself, and we agreed to buy it, and I should bid for it. No limited price was stated in either case; it was struck off to me. Next lot was No. 6, and it was proposed by Holmes, I think, that it should also be bought on the company's account. I was not willing to be the bidder, but was willing it should be bought for the company. I was unwilling to bid, and be bound for the purchase money, as I was not particularly acquainted with any of them except Holmes. It was agreed that Osborn should be the bidder for that. It was bid for and struck off to Osborn, with out any limited price. It was then urged that we had better buy No. 5, because we should have to make an outlay of capital for improvements, and should want more land. It was agreed to, and Osborn bid, and it was struck off to him. No. 10 was then proposed to be bought, as that would make our purchase nearly square, and it was so done.

It was proposed by Holmes or Osborn, and concurred in by Burrowes and myself. So far as I know the property was sold fairly. The persons concerned in the property at the time, so far as I then knew or believed, were Osborn, Holmes, Burrowes, Stevens, and myself. After the sale in the evening, I understood Horatio Kearny was one.

Map shown, witness continues: My opinion is, that to have divided the property amongst the heirs, would have been a great injury to their interests. If the property was now in the same situation as it was then, it would bring no more now than it did then. I kept an account of the profit and loss of the company's interest, and after I had sold all out, and collected all I could, I made $312, giving in my time and expenses. After the deed was given, twenty-four building lots were laid off, as appears in the small map. It was agreed that sixteen of them should be set up and sold among the company, reserving No. 8 to be sold alone. In 1830 we built a dock and two sloops, and in my account the earnings of the sloops were calculated; but for that, we should have lost. The company built a tavern house and sheds, at a cost of $6,000, exclusive of dock. The deed was made to John I. Taylor, with my consent. The object was to save expense, and it was thought it would answer just as well as to make deeds to the purchasers. John I. Taylor was an unmarried man.

I joined in a deed of conveyance to Oliver Vanderbilt, and there were covenants of warranty in the deed, as I believe.

Alfred Walling being sworn, says: I made the map shown, (prout the same,) nearly two years ago.

John Hopping being sworn, says: I was not present at the sale. On the evening of the first day of sale, I went to the house of James Hopping to hear how they got along with vendue. I think they had not then sold any lot. He said Daniel Holmes and others were about making up a company to buy the Fishing point lot. I asked him why he did not take a share, or whether he was going to take a share. He said he was not; he was a commissioner, and could not do it. I told him that he might tell them I would take a share. I think that when he agreed to take a share, was the time we met to lay out a road. Leonard Walling came in in consequence of Stephens backing out, and I solicited him to take a share the same day the surveyors met to lay out the road.

I recollect a dock being built upon the property. I was pretty much a silent member of the company, after my brother took hold of it. I think there was no dock commenced when the road was laid out. My brothers, James and Leonard Walling, superintended the first sloop. She was built at Compton's creek, about eight miles down the bay. I believe she was built in the summer. No wood was cut on the premises at the time of laying out the road. I did not know how much the company intended to buy, the night James first spoke to me about it. When he came back the second night, he said the company thought best to buy further back, so as to have a road. I did not know how

many were to form the company. I thought it would consist of about eight persons, but I was to abide by whatever they agreed to. I derived this calculation from what James told me on the last night. I might have made up my mind the first night that there would likely be eight in company, as there was one of eight at Compton's creek, consisting of William Morford, Thomas Morford, James Hopping, John Hopping, William Murray, Calvin Bennett, Richard Stout, Jacob Ralph; my brother told me of Stephens, Burrowes, Holmes, Osborn, Kearny, Lippincott, and myself. I thought as there were eight in the company below that would be a good number, and that it would likely consist of that number; but whatever the company did, I would agree to. My impression was, that there were two or three who would come in if they could; one was my brother Primrose, and the other Mr. Stevens. I made no arrangement that night as to who should pay for my share. I have paid the money for my share, but I do not recollect the time or place of payment; all I can say is, it has been paid. I joined in the deed to Vanderbilt. I received from him my share of the purchase money. My brother died, and our dividend of lots, 23 acres, we sold to Ezra Osborn and Garret Hendrickson. Don't remember when. They gave us $100 per acre. That money was divided between me and his estate. I did not convey three-eighths of one-fourth to James Hopping. My brother and myself paid the money for Primrose. James and John Hopping paid all the money for Primrose. I do not know who gave bond for last payment; I may or may not. Can't say that I understood, on the night of the second day, that the company was to consist of any particular number of persons. My brother James was the business man, and he done the business for me. I don't remember sending the money down to pay, but I always tried to meet my engagements. My brother James did not tell me, either on the first or second day of sale, that he was one of the company.

Thomas Arrowsmith being sworn, says: I was acquainted with the commissioners; their characters were unimpeached, and stood as high as any in the county; Joseph Taylor was the same. I was acquainted with the property; it brought more than it was supposed it would bring. I suppose the course taken by the commissioners to sell the property was most judicious and advantageous for all concerned. Joseph Taylor died perhaps in 1835; James Hopping died perhaps in 1836. I was at sale the first day; bid for a lot, but did not buy it. Think I bid for another. I did not bid at Fishing point lot. There was some wood; some lots might have had 15 cords to the acre. Wood was low then; it advanced in the winter.

John M. Bartleson being sworn, says: I was the editor of the Monmouth Inquirer; was in 1829. It is printed at Freehold. There is the paper. Advertisements read (prout the same) dated September 1, 1829. This is the receipt for printing 100 handbills, struck by us, of the sale of the Kearny property. They were the same as the printed copy in the paper.

Hendrick Vandyne being sworn, says: I live within a mile of this Key Port property, and have for 53 years. Was present at sale; went to buy. I bid for lot No. 4. I think it was the lot that Jonathan Tilton bought on southeast corner of property, $18\frac{43}{100}$ acres. I did not buy it. It brought more than I thought it was worth. Heard a man bidding against me who could not pay, and I stopped. I bid for lot No. 5, adjoining me, $59\frac{52}{100}$ acres. It brought more than it was worth. A number bid against me at first. At last, only Squire Osborn, to whom it was struck off. But for him, I would have got it for 3 or 4 dollars less per acre. I bid until it got beyond what it was worth to me. During sale, I heard Horatio say that property was selling high; that individuals gave more than it was worth. He bid for at lot with an old house on it. Said he had made purchaser pay more than it was worth, and he might now have it and be damned. Horatio said if sale went at same rate it would bring $20,000, and that was beyond his expectations, and no man in our neighborhood thought it would bring so much. I never heard a man say in my life but that it was fairly sold. The commissioners were the most respectable men in our part of the country. Taylor was always intimate with the Kearnys. I had not a doubt on my mind but that it was fairly sold. I was there when Fishing point was sold. There was some dispute about it after it was struck off.

John Sproul being sworn, says: I was present on the two days of sale, to buy. I bid at lot No. 7, next to Fishing point. I did not buy, because I thought it brought more than it was worth; there were several bidders at first; towards the last, only Osborn or Lippincott. At time of sale I should not say there was over two or three acres of wood in No. 8, young growth. Said, down on the point, would turn out 7 or 8 cords to the acre, worth, standing $2 50 to $3 00 per cord. No wood on No. 9, except a little piece. On No. 10, a little on one end. No. 7 had a portion of wood on it; cut out a great deal and swamps in it; about two-thirds of it wood, but cut out. No. 6 had very little wood on it; cedars and hedge row, chiefly old fence. No. 5 had some wood; small quantity. No 11 my brother at more than it was worth when bid off. Thought it high. In spring after, I offered to sell out my one-third for $100 discount. I should not have bought it, but my brother wanted me to take a share after he had bid it off. I always thought it a fair sale. It brought more than I had made calculations on.

My brother James bid it off, and brother Joseph took a share afterwards. We did not know James was going to buy. It runs in my head that I had about seven cords to the acre; 10 or 12 acres had more on. I have made no calculation, but throwing in our own labor, (we all three worked, carted and cut,) we thought we about cleared ourselves. I bought about three years afterwards, land valued at $10 per acre, and I gave them $300 each, for their share. For some of our wood, we got in New York, 10 shillings per load, $\frac{1}{4}$ of a cord. We happened to get a load or two off in a very good time, and got 20 shillings, or $3 00

per load. New York load is about ¼ of a cord. There was considerable cedar hardly worth cutting.

One quarter came out for freight. My brothers sold out about three years after sale. Wood rose the second winter, when very cold. It was that which cleared us. It was never so high, before nor since.

Certified letters of administration to Joseph Taylor, on estate of Edmund Kearny, deceased, dated February 20th, 1823, read in evidence. (Prout the same.)

Certified copy of inventory of said estate, dated Februry 26th, 1823. (Prout the same.)

Certified copy of final accounts of Joseph Taylor, administrator of Edmund Kearny, dated October 7, 1824.

(Prout the same)

William Little being sworn, says: I resided in 1827 at Middletown point; was in the mercantile business. I believe I had vessels in the slooping business 15 or 16 years. My property was at Middletown point. I was at the Kearny sale. Neighbors all went. In afternoon of first day of sale, after adjournment, I had a talk with John Van Pelt. He asked me if I was willing to join him and James Ellis in buying Fishing point lot. I partly onsented, but told them to come to my store next morning. We agreed to go partners in purchase of lot. Van Pelt said there had better be somebody to bid. He said he had it in view to get Stevens to bid for our company. I objected, that, as he lived near, he might think we would not improve. He said he could get William Walling. Ellis had a dock between Key port and Middletown point. Van Pelt had a dock near mine at the point.

Was present when lot was struck off to Richard C. Burrowes; they cried it for some time; there was a dispute; Van Pelt said, Captain Walling, was not that your bid? He answered, it was his bid, or he thought it was; can't say which. Primrose, the auctioneer, said he did not take it for his bid. Walling said that it was his bid; it became a subject of general conversation; some said set it up; others said it would not be fair, it was struck off fairly; it was agreed to submit it to commissioners, whether to set it up again. They consulted, returned and gave it as their opinion that it should not be set up, as it was struck off fairly to Burrowes. We agreed upon no sum, but were to keep pretty close at sale, that we might consult. Van Pelt wanted it set up again; nothing was said about our object.

I did not hear Walling bid; I think he bid by nodding.

Complainants offer—

Deed, John I. Taylor to Isaac K. Lippincott, Ezra Osborn, Joseph Taylor, James Walling, John Hopping, David S. Bray, and Leonard Walling, dated April 28th, for $\frac{1}{8}$ $212\frac{34}{100}$ acres, reserving in Taylor 24 lots, surveyed by Leonard Walling, containing, $8\frac{23}{100}$ acres, acknowledged April 28, 1830, recorded same day.

(Prout the same.)

Letter of attorney, 24th May, 1834, from I. K. Lippincott and

others, grantees above named, and wives, to John I. Taylor, to convey or lease said property. Acknowledged May 24, '34; recorded 15th September, '34.

(Prout the same.)

Deed of partition among the grantees of John I. Taylor's deed, dated May 21st, 1832. Mutual releases. Acknowledged day of date, and recorded September, 1832.

(Prout the same.)

Map of the 24 lots referred to in the deed from John I. Taylor to Lippincott and others, above mentioned.

(Prout the same.)

Certificate of statement of lots sold, made by clerk of Monmouth, recorded with explanation that some had buildings on, sold after improvements, docks, and roads, &c.

(Prout the same.)

George Sullivan being sworn, says: Both of these papers or copies were presented by me to the speaker of the house of assembly. I asked him to present this petition, dated February 12th, 1844. The second petition presented to the speaker of assembly, February 22d, with a request that he would present them to the assembly. The speaker handed the petition to the clerk, and it was read. The first was read the 12th February, and copies distributed by the sergeant-at-arms. This, or the original, was not signed by the heirs. I signed it as attorney and counsel for them. I have no power of attorney from Horatio Kearny, but had a letter from him, which I have at my room. The matters and things therein stated are true, so far as I know. I have no interest in the event of this suit. There is a mortgage given, to meet the exigencies of Thomas Kearny, executed by his sister, Anne E. Kearny, given to my firm of Sullivan and Bowdoin. It was to raise $3,000, about a year ago. The mortgage is not a lien on this property; there never has been any money advanced on the mortgage. Thomas Kearny was not able to defray the expenses of carrying on the suit; he proposed to raise money by a mortgage on the property, believing that to be practicable, and for that purpose made conveyance to Anne of his share, and she gave a mortgage to my firm. No money has been raised on the mortgage, and I do not consider I hold the mortgage to indemnify me; I consider Thomas Kearny. I make advances on his credit. I think I am security for costs in the equity case. I was heard before the committees of both houses of the legislature.

It is admitted that the following notice was published in the Monmouth Democrat, a newspaper published and circulated in said county of Monmouth, for six weeks successively, from the 7th December, 1843, viz: Notice is hereby given, that application will be made to the legislature of New Jersey, at its next session, for an act to confirm and validate certain deeds and conveyances, made by Leonard Walling, James Hopping, and Edward Taylor, commissioners to make division and sale of the real estate of Edmund Kearny, deceased. Dec. 7, 1843.

In original bill and amendments. Final decree.

Circuit court of the United States for the district of New Jersey, of September term, 1851.

Between THOMAS KEARNY, Thomas Jordan and Catharine, his wife, late Catharine Kearny, George C. Thomas and Anastasia, his wife, Horatio N. Kearney, Anne E. Cheeseborough, complainants,

and

JOHN I. TAYLOR, son of Joseph Taylor, deceased, Edward Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Daniel Holmes, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, children of Leonard Walling, deceased, Sarah Holmes and Samuel Holmes, her husband, Catharine Holmes, Edward Hopping and John Hopping, sons of James Hopping, deceased, Sarah Leonard and her husband, Thomas Leonard, Mary Frost and her husband, James Frost, Samuel Taylor, Hannah Osborn and her husband, Ezra Osborn, Mary Burrowes and her husband, Richard C. Burrowes, Elizabeth Michum and her husband, John Michum, Martha Fields and her husband, Thomas Fields, Sarah Taylor, Huldah Taylor, Sarah Van Mater and Gilbert Van Mater, her husband, and Oliver Vanderbilt, defendants.

On cross bill. Final decree.

In the same court of September term, 1851.

Between JOHN I. TAYLOR, Isaac K. Lippincott, Ezra Osborn, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Catharine Holmes, Edward and John Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, John Michum and Elizabeth, his wife, Thomas Field and Martha, his wife, Sarah Taylor and Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, complainants,

and

THOMAS KEARNY, Thomas Jordan and Catharine, his wife, George C. Thomas and Anastasia K. Thomas, Anne E. Cheeseborough and Horatio N. Kearny, Daniel Holmes, Edward Taylor, Richard C. Burrowes and Mary, his wife, defendants.

The above causes coming on to be heard at the last regular term of this court, held at the state house, in the city of Trenton, before the hohorable Robert C. Grier, in the presence of Edward N. Dickerson and Benjamin Williamson, esquires, of counsel with the complainants in original, and of defendants in cross bill, and of P. Vredenburgh, William L. Dayton, and Peter D. Vroom, esquires, of counsel with defendants in the original, and of complainants in cross bill, and the pleadings, depositions, exhibits, and proofs, being read, and the arguments of the respective counsel being heard and considered, and the said court having taken time to advise thereon; and now, on this thirtieth day of September, in the year eighteen hundred and fifty-one, it appearing to the said court that the complainants in the original bill are not entitled to the relief sought and prayed for in their said original bill of complaint and amendments, and that the complainants in said cross bill are entitled to the benefit of the private act of the legislature of New Jersey, mentioned in said cross bill as a matter of defence to said original bill and amendments, and that said private act is a good defence to said original suit, and that the sales of the real estate of Edmund Kearny, deceased, by the commissioners named in the pleadings, and the deeds given by said commissioners therefor, were made fairly, and without fraud, and upon a good and sufficient consideration; and that, in the said sales or deeds given by the said commissioners, there was no fraud, either absolute, direct, or actual, but that the same were in all things fair and bona fide, and the purchase money therefor received by the complainants in the original bill, it is ordered, adjudged, and decreed, that the said original bill be, and the same is hereby, dismissed with costs, and that the defendants in said original bill have execution therefor.

And that the complainants in said cross bill recover their costs in said cross bill, to be taxed against the defendants, Thomas Kearny, Thomas Jordan and Catharine, his wife, George C. Thomas and Anastasia, his wife, Anne E. Cheeseborough, and Horatio N. Kearny, and that the complainants in said cross bill have execution therefor against said last mentioned defendants in said cross bill.

September 30, 1851. R. C. GRIER,
Associate justice Supreme Court of the United States, judge of the third circuit.

Circuit court of the United States, for the district of New Jersey.

Between THOMAS KEARNEY, Thomas Jordan and Catharine, his wife, and others, complainants, and JOHN I. TAYLOR and others, defendants. } On original bill.

Between JOHN I. TAYLOR and others, complainants, and THOMAS KEARNY and others, defendants. } On cross bill.

To the circuit court of the United States, for the district of New Jersey.

The petition of Thomas Kearny, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Cheeseborough, and Horatio N. Kearny, the complainants in the above suit on original bill, and defendants in the above suit on cross bill, respectfully showeth: That a final decree was rendered in said suits against your petitioners, on the thirtieth day of September, eighteen hundred and fifty-one; that your petitioners are advised that there is manifest error in said decree, and are aggrieved thereby.

They therefore pray an appeal from said decree of this honorable court, in the above entitled causes, to the Supreme Court of the United States.

JAMES S. GREEN,
Solicitor of complainants in original bill.
A. O. ZABRISKI,
Of counsel.

Know all men by these presents that we, Thomas Jordan and Amzi Dodd, are held and firmly bound unto John I. Taylor, Edward Taylor, Isaac K. Lippincott, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Samuel Holmes and Sarah, his wife, Catharine Holmes, Edward Hopping, John Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, Ezra Osborne and Hannah, his wife, Richard C. Burrows and Mary, his wife, John Micheem and Elizabeth, his wife, Thomas Fields and Martha, his wife, Sarah Taylor, Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, the obligees in this bond, in the sum of five hundred dollars, to be paid to the above named obligees, their executors, administrators, or assigns; to which payment, well and truly to be made, we do hereby firmly bind ourselves, and each of us, jointly and severally, our and each of our heirs, executors, and administrators. Sealed with our seals, dated the second day of August, in the year eighteen hundred and fifty-two.

Whereas at the circuit court of the United States, for the district of New Jersey, held at Trenton, at the term of September, in the year eighteen hundred and fifty-one, a final decree was rendered by said court, sitting in chancery, in two certain suits in said court pending, between Thomas Kearney, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Horatio N. Kearney, and Anne E. K. Cheseborough, complainants, and the above named obligees, and Daniel Holmes, who has since died, defendants on original bill; the other between said John I. Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Catharine Holmes, Edward Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, John Micheem and Elizabeth, his wife, Thomas Field and Martha, his wife, Sarah Taylor and Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, complainants, and

Thomas Kearney, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Cheeseborough, Horatio N. Kearny, Daniel Holmes, Edward Taylor, and Richard C. Burrows and Mary, his wife, defendants, upon cross bill against said Thomas Kearney, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Cheeseborough, and Horatio N. Kearny, from which they, the said Thomas Kearney, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Cheeseborough, and Horatio N. Kearney, have appealed to the Supreme Court of the United States.

Now, therefore, the condition of the above obligation is such that if the appellants above named shall prosecute the said appeal with effect, or on failure thereof shall answer and pay to the above named obligees, all costs and damages that may be awarded against them, the said appellants, then this obligation to be void, otherwise to remain in full force and virtue.

THOMAS JORDAN, [L. S.]
AMZI DODD. [L. S.]

Signed, sealed, and delivered in the presence of—
THEO. MEAD.

CIRCUIT COURT OF THE UNITED STATES,
For the district of New Jersey.

Between THOMAS KEARNEY, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Horatio N. Kearney, and Anne E. K. Cheeseborough, complainants,
and
JOHN I. TAYLOR, Edward Taylor, Isaac K. Lippincott, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Samuel Holmes and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, Ezra Osborn and Hannah, his wife, Richard C. Burrows and Mary, his wife, John Micheem and Elizabeth, his wife, Thomas Fields and Martha, his wife, Sarah Taylor, Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, def'ts. } On original bill.

Between JOHN I. TAYLOR, Isaac K. Lippincott, Ezra Osborn, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Catharine Holmes, Edward Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, John Micheem and Elizabeth, his wife, Thomas Field and Martha, his wife, Sa-

rah Taylor, Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, complainants,
and
THOMAS KEARNY, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Cheeseborough, and Horatio N. Kearny, defendants.
} On cross bill.

On motion of Abraham O. Zabriskie, of counsel with Thomas Kearney, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Horatio N. Kearney, and Anne E. K. Cheeseborough, complainants in the above suit by original bill, representing that they feel aggrieved by the decree rendered in the above suits, on the 30th day of September, A. D. 1851, and praying for an appeal to the Supreme Court of the United States from said decree:

It is, on this sixth day of September, 1852, ordered, that an appeal be, and the same is hereby, allowed to said complainants above named on their filing the bond of Thomas Jordan with Amzi Dodd, as security, in the penal sum of five hundred dollars, conditioned according to law.

PHI. DICKERSON, *Judge*.

UNITED STATES OF AMERICA,
State of New Jersey, ss.

I, Edward N. Dickerson, clerk of the circuit court of the United States, for the district of New Jersey, do hereby certify, that the foregoing pages, hereto annexed, contain a true, full, and complete transcript of the record and proceedings in the suits aforesaid.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, this twenty-eighth day of October, in the year of our Lord eighteen hundred and fifty-two.
[L. S.]

EDWARD N. DICKERSON,
Clerk circuit court U. States.

UNITED STATES OF AMERICA, *ss.*

To John I. Taylor, Edward Taylor, Isaac K. Lippincott, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Samuel Holmes and Sarah, his wife, Catharine Holmes, Edward Hopping, John Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, Ezra Osborn and Hannah, his wife, Richard C. Burrowes and Mary, his wife, John Micheem and Elizabeth, his wife, Thomas Fields and Martha, his wife, Sarah Taylor, Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, greeting.

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to an appeal granted to said Supreme Court from a decree of the circuit court of the United States, for the district of New Jersey, sitting in equity, in two certain suits in said circuit court, pending on bill and cross bill; the one between Thomas Kearny, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Horatio N. Kearny, and Anne E. K. Chesebrough, complainants, and you, together with Daniel Holmes, who has since died, as defendants on original bill; and the other between said John I. Taylor, Isaac K. Lippincott, Ezra Osborn, John Hopping, Theresa Walling, Catharine Walling, Adaline Walling, Washington Walling, Catharine Holmes, Edward Hopping, Thomas Leonard and Sarah, his wife, James Frost and Mary, his wife, Samuel Taylor, John Micheem and Elizabeth, his wife, Thomas Field and Martha, his wife, Sarah Taylor, and Huldah Taylor, Gilbert Van Mater and Sarah, his wife, and Oliver Vanderbilt, complainants, and Thomas Kearny, Thomas Jordan and Catharine, his wife, Anastasia K. Thomas, Anne E. K. Chesebrough, Horatio N. Kearny, Daniel Holmes, Edward Taylor, and Richard C. Burrowes and Mary, his wife, were defendants upon cross bill, to show cause, if any there be, why said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Philemon Dickerson, district judge of the United States, for the State of New Jersey, acting as judge of the circuit court of the United States, for the district of New Jersey, in this behalf, at Patterson, this sixth day of September, in the year eighteen hundred and fifty-two.

PH. DICKERSON, *Judge.*

The above was served on me, October first, 1852.

P. VREDENBURGH.